

Michigan Journal of International Law

Volume 42 | Issue 3

2021

A Path to Transformation: Asking “The Woman Question” in International Law

Cochav Elkayam-Levy
University of Pennsylvania Law School

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [International Law Commons](#), [Law and Gender Commons](#), and the [Public Law and Legal Theory Commons](#)

Recommended Citation

Cochav Elkayam-Levy, *A Path to Transformation: Asking “The Woman Question” in International Law*, 42 MICH. J. INT’L L. 429 (2021).
Available at: <https://repository.law.umich.edu/mjil/vol42/iss3/2>

<https://doi.org/10.36642/mjil.42.3.path>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

A PATH TO TRANSFORMATION: ASKING “THE WOMAN QUESTION” IN INTERNATIONAL LAW

Cochav Elkayam-Levy*

“As feminists articulate their methods, they can become more aware of the nature of what they do, and thus do it better.”¹

“Method concerns the way one thinks, not what one thinks about, although they can be related.”²

I. INTRODUCTION

Methods matter, and the discussion over feminist methods in international law is an important one. As Kathrine Bartlett famously noted, “thinking about method is empowering.”³ It makes us more aware of the nature of what we do and what we aim to improve in the law. Consequently, we can act more effectively when we examine legal structures and do it with a stronger sense of commitment towards our feminist work. Methods are also the fundamental means by which we produce “valid knowing.”⁴ The discussion of feminist methods in international law is one that engages with the combination of rules and assumptions that shape and delimit our views about the exclusion of women’s experiences from this doctrine. Methods

* Visiting Professor at Bar Ilan University; S.J.D. & L.L.M. with distinction honors, University of Pennsylvania Law School; former Penn Law Human Rights Scholar.

I wish to express my gratitude to Professor William Burke-White for his support, brilliant insights and guidance from the very early stage of this research. I am grateful to Ilya Rudyak for countless hours of fruitful conversations about this research, to Sagy Watenberg Izraeli for her excellent research assistance, and to Professor Shana Stobin for her endless support. I would also like to thank Professors Serena Mayeri and Beth Simmons, Yael Vias Gvirsman, Nofit Amir, Dr. Michal Gat Gilad, and participants in workshops at the Salzburg Global Seminar, the University of Pennsylvania Law School and Georgetown University Law Center for generous comments and thoughts on earlier drafts of this article. I am grateful as well to Samantha Franks, Editor-in-Chief of this journal and to Farshad Rahimi Dizgovin, Mackenzie Martin, and Ellen Aldin for their valuable comments and the many hours they devoted to edit this article in the midst of a global pandemic. Lastly, a special gratitude is due to Professors Katharine Bartlett and Daphne Barak-Erez whose writing was an inspiration.

I dedicate this work to my family and the many visionary women around us.

1. Katharine Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 831 (1990).
2. Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38 SIGNS 1019, 1019–30 (2013).
3. Bartlett, *supra* note 1, at 831.
4. MacKinnon, *supra* note 2, at 1019.

determine the ways within those limits by which we aim to assert truth claims, determine our possibilities and conclusions, and establish the grounds for legal reform. Our chosen method defines what we consider as evidence and what we accept as proof.⁵ Yet, it cannot guarantee a particular outcome or even the right one.⁶ Rather, it provides a sense of discipline in our analysis.

Despite their significance, feminist methods in international law have been deserted.⁷ They seem neglected in ways that have weakened the sense of discipline that nurtures both our feminist knowing and our confidence in feminist analysis. The prospect of clarifying some of the vagueness is the primary motivation for this article. Feminist theories can offer critical analyses that classical theories fail to provide and promote gender equality in ways that address its complexity. The greater appreciation of methods is not a preference but a present necessity in international law. Among many reasons, understanding methods inspires a better grasp and awareness of our intellectual basis and of the growing positionality of feminist knowing in global contexts (and even a critical assessment of it). Our ever-situated wisdom is what allows us to capture the diverse, intersectional experiences of women's lives. It is also essential in a system predicated on an epistemic angle of vision defined by the ability to promise respect for global values

5. Bartlett, *supra* note 1, at 830.

6. *Id.* at 846.

7. For references and discussion of feminist methods in international law, see, e.g., Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991) [hereinafter Charlesworth et al., *Feminist Approaches to International Law*]; Hilary Charlesworth, *Feminist Methods in International Law*, AM. J. INT'L L. 379, 381 (1999) [hereinafter Charlesworth, *Feminist Methods in International Law*]; HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW* (2000). Hilary Charlesworth commented in this regard, though in another context, that:

[F]eminist commitments, such as the equality of women, have influenced the development of international law, but they have been incorporated only in a partial manner and implemented without regard to context or with the empathy for their intended beneficiaries. This underlines a distinction between feminist messages and feminist methods in international law. The former have been influential in rhetorical terms, while the latter have been ignored.

Hilary Charlesworth, *Talking to Ourselves? Feminist Scholarship in International Law*, in *FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW: BETWEEN RESISTANCE AND COMPLIANCE* 17, 32 (Sari Kouvou & Zoe Pearson eds., 2011) [hereinafter Charlesworth, *Talking to Ourselves*].

and varied narratives.⁸ If our knowing in law is forever partial,⁹ then our methods (i.e. our doing law) are affected as well.¹⁰

This article is, therefore, dedicated to identifying, explaining and differentiating feminist methods in international law. It introduces the potential contribution of the method of asking *the woman question* – or what can be also termed as *the gender question* for broader inquiries about people of all genders – for the work of many international lawyers on their path to developing feminist consciousness and a pragmatic analytical approach to their studies.¹¹ *The woman question* seeks to “identify the gender implications of rules and practices which might otherwise appear to be neutral or objective.”¹² This method strives for a greater understanding of the consequences that specific norms or practices have on women or persons who identify themselves as women. While this question seeks to highlight and address the continuing injustice that women experience, it also allows scholars to see beyond the gender binary in ways that take into consideration a spectrum of genders and the impact of the law on people of all genders. It proposes clarity and promises a feminist sensitivity to any analysis of international law. Above all, it solves a rather perplexing dilemma of a choice between the ramified feminist approaches.

Based on the conceptual framework provided by *the woman question*, this article develops an analytical model that corresponds with the specific limitations of the international legal regime with respect to women. It offers three stages for exposing the impact of international law on women, suggesting: (1) initial examination of the global regulation – asking scholars to identify the dominant standards that govern the resolution of a certain dilemma or problem, and to map the relevant global stakeholders that have the mandate or power to address it; (2) an impact assessment – calling on schol-

8. The positional understanding of feminist theory encapsulates the inherent complexity to promote gender equality through international institutions and global legal rules which will always be inadequate in the responding to women's diverse realities.

9. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7.

10. Catharine MacKinnon explains, for example, that having an intersectional method means adopting “a distinctive stance” that “embodies a particular *dynamic* approach to the underlying laws of motion of the reality it traces and traps.” MacKinnon, *supra* note 2, at 1020 (emphasis added).

11. *The woman question* is used across disciplines. See, e.g., *The Woman Question: Philosophy of Liberation and the Liberation of Philosophy*, in WOMAN AND PHILOSOPHY: TOWARD A THEORY OF LIBERATION 5 (C. Gould & M. Wartofsky eds., 1976) (examining *the woman question* in philosophy); see also Daphne Barak-Erez, *Her-meneutics: Feminism and Interpretation*, in FEMINIST CONSTITUTIONALISM 85, 95 (Beverley Baines, Daphne Barak-Erez & Tsvi Kahana eds., 2012) (applying this method in constitutional law contexts). Barak-Erez's work served as the inspiration for this article, as she discusses the need to see beyond existing conflicts between feminist views. Although the different feminist approaches that exist in international law contexts are not similarly problematic, the need for an overarching method in international law has proved crucial to respond to the thorny dilemma of choosing between the differing feminist paradigms.

12. Bartlett, *supra* note 1, at 837–49.

ars to look for gaps, opportunities and silences (i.e. unregulated or minimally regulated areas) that may affect women, including women of different cultural and socioeconomic backgrounds. Assessing such impact involves, for example, studying the dynamics of existing international rules and the reality of women's lives. This entails examining whether women are represented, and to what extent global norms, concepts, institutions and standards respond to women's interests. An important part of assessing impact is also the identification of the hidden social assumptions underlying the rules and the narratives that implicitly differentiate between the sexes or exclude women; (3) The third and final step encourages scholars to move forward upon revealing deficiencies and identify not only corrective measures but possible transformative solutions. The article distinctively highlights a necessary paradigmatic shift to examine new opportunities for gender justice by reimagining the international legal order – its rules and institutions. It argues that asking *the woman question* in international law should be based on the evolving idea of “transformative equality,”¹³ which acknowledges the need for profound social changes and long-term transformative processes in order to address the deeply entrenched societal inequalities based on gender that continue to hamper progress towards gender equality and sustainable development.¹⁴

13. Sandra Fredman, *Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights*, in 1 TEMPORARY SPECIAL MEASURES: ACCELERATING *DE FACTO* EQUALITY OF WOMEN UNDER ARTICLE 4(1) UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 111, 115 (Ineke Borerefijn, Fons Coomans, Jenny Goldschmidt, Rikki Holtmaat & Ria Wolleswinkle eds., 2003) (claiming that the conception of equality embodied in the Women's Convention should be regarded as a transformative one); Andrew Byrnes, *Article 1 in THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 51, 55–56 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012) (briefly explaining the concept of transformative equality).

14. The concept of transformative equality is increasingly gaining traction in international human rights law. My research identifies this concept as an emerging new global paradigm which remains largely under-developed. The process of understanding its significance and value has only just begun. At the most basic level, transformative equality is a fascinating idea that assumes that the main obstacle for change is that we continue to try and operate within a reality of gendered societal structures of hierarchy that perpetuate women's inequality, instead of aiming towards transforming them. In other words, we attempt to make women fit into certain conceptions and certain forms of institutions that are simply inadequate and essentially preserve inequalities. Despite the significance of transformative equality, ambiguity remains regarding the ways to engage transformative processes. It is widely unclear what work needs to be done to achieve such transformation. This article suggests several avenues. See *infra* Part IV, n.242. I address these issues more comprehensively in my ongoing research project “A World in Transition: The Global Shift to Transformative Equality” (highlighting the growing power of the concept of transformative equality; examining the work of human rights bodies including that of CEDAW Committee; showing that presently this work only narrowly refers to the concept of transformative equality and provides partial guidance to states; further developing this concept and methods to achieve transformation; demonstrating its potential for addressing contemporary challenges as well as engaging with possible futures related to the advancement of gender equality.) See Cochav Elkayam-Levy, *Re-Imagining the*

The goal of this analytical model as proposed in this article is to allow a systematic analysis of diverse gender phenomena in international law within a clear conceptual framework aiming to encourage international thinkers to examine the unique inadequacies of the international legal system. The article ultimately shows that the central feminist question in international law is *the woman question*, probing: What is the impact of international law and its institutions on women and, in what ways should it be changed or more profoundly transformed? And, more generally, what's the impact of gender on the law?¹⁵

As in many disciplines governing our human knowledge, women simply were absent in the initial formation of international law and played little role in its development. In essence, the language of feminism is a language of absence. It is a constant search to fix a void.¹⁶ In scholarly terms, feminist inquiry in international law is relatively new and considered to be an emerging and stirring stream of thought that occupies the work of a growing number of young international lawyers of all genders.¹⁷ Feminist theories, more generally, analyze the masculinity and partiality of our disciplinary knowledge.¹⁸ The feminist project is a project of rethinking and reshaping human understanding of the world in a manner that reflects and appreciates the contribution of women to society, claims justice for their experiences, and offers a new angle to the way we think of our community. Feminist theories explore “the exclusion of (some) women’s needs, interests, aspirations,

Rules – the Global Transition to Transformative Equality and the Narratives of Feminist Religious Movements (Dec. 31, 2020), <https://ssrn.com/abstract=3757963> (providing additional details on this project).

15. See generally Hilary Charlesworth, *Feminist Methods in International Law*, *supra* note 7.

16. Feminist inquiry in international law is relatively new. See Mary Robinson, *Foreword*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES* 1 (Doris Buss & Ambreena Manji eds., 2005); see also Karen Engle, *International Human Rights and Feminisms: When Discourses Keep Meeting*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES* 47 (Doris Buss & Ambreena Manji eds., 2005) (noting that feminist scholarship in international law began in the mid-1980s focusing on the task of adding women to human rights protections guaranteed under international law. Global feminist activism appeared earlier); Dianne Otto, *Feminist Approaches to International Law*, in *THE OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW* 488 (Anne Orford & Florian Hoffman eds., 2016) (explaining that feminist engagement with international law grew significantly by the mid-1990s, but also noting that women continue to struggle for basic rights rather than being treated as full rights-bearing subjects of the law).

17. It was less than two decades ago that Charlesworth and Chinkin published their landmark book, *The Boundaries of International Law*, in which they attempted to systematize feminist scholarship and its critique of the international legal system. This book remains the single most important text on feminist theories and of feminist readings in international law. CHARLESWORTH & CHINKIN, *supra* note 7. In 1992, Karen Engle analyzed feminist critiques of international human rights law and described it as an area in the literature which contained about a dozen academic works. Engle, *supra* note 16, at 59.

18. Including the partiality of feminist inquiry itself. See Denise Reaume, *What's Distinctive about Feminist Analysis of Law*, 2 *LEGAL THEORY* 265 (1996).

or attributes from the design or application of the law.”¹⁹ In international legal contexts, feminists assume that women’s absence from the creation of international law has distorted the discipline’s boundaries and logic.²⁰ The fact that women were not allowed to make intellectual contributions to this field meant that it represented a narrow range of interests and continues to have tremendous ongoing effects on the status of women.²¹ The exclusion of women in international law has created a structural bias that requires fundamental changes in order to address women’s inequality. Attempts for the simple inclusion of women are thus bound to be very limited.

As Hilary Charlesworth points out, feminist methods thus therefore “seek to expose and question the limited bases of international law’s claim to objectivity and impartiality and insist on the importance of gender relations as a category of analysis.”²² Endorsing a “feminist perspective”²³ in the study of the international legal regime means acknowledging that this regime is challenged for its gendered constructions and for being developed mostly by men in ways that may perpetuate women’s inequality.²⁴ Feminist readings more generally require constant reconceptualization of norms and organizing principles of the system in order to better address women’s concerns.²⁵

19. Hilary Charlesworth, *Gender and International Law*, in HANDBOOK ON GENDER IN WORLD POLITICS 139 (Jill Steans & Daniela Tepe-Belfrage eds., 2016).

20. CHARLESWORTH & CHINKIN, *supra* note 7, at 1–18.

21. For example, feminists’ demands that domestic violence become a serious international concern involved breaking many barriers, conceptual and institutional. The term “violence against women” is not mentioned in the Convention on the Elimination of Discrimination against Women (CEDAW). It was only in the early 90’s that the U.N. General Assembly adopted the Declaration on the Elimination of Violence Against Women, which clarified that states must not evade their obligations to eliminate violence against women, and that the Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 19 on violence against women which provided a more detailed and comprehensive review of the issue. *See* Rep. of the Comm. on the Elimination of Discrimination Against Women Eleventh Session, at 1, U.N. Doc. A/47/38 (1993) (note that GR No. 35 recently updated GR No. 19). For a related discussion, see Otto, *supra* note 16, at 490 (discussing the trajectories of feminist reform projects in international law).

22. Charlesworth, *supra* note 19, at 159.

23. I primarily use the term “perspective” to describe the angle of vision for the inquiry.

24. CHARLESWORTH & CHINKIN, *supra* note 7, at 1 (“Women form over half of the world’s population, but their voices, in all their variety, have been thoroughly obscured by and within the international legal order, hence they deserve to be heard and their interests to be fully integrated and protected.”).

25. *Id.* at 1; *see also* Otto *supra* note 16, at 490 (arguing “the practices of critique and reform, and their productive tensions, are essential to resisting the law’s colonization of feminist politics and keeping feminist imaginaries of a better world alive . . . It is in the interstices of hope and despair, conundrum and paradox, that feminists have the best chance of understanding how international law might yet be a means for promoting feminist change.”).

The gender-based distinctive focus of feminist theories on the structures, substance, actors, and normative foundations of the international regime has considerable implications for international law. Though it was hard to imagine this development only two decades ago,²⁶ in recent years, feminist theory has been among the most rapidly expanding areas of normative analysis of international law.²⁷ Feminist scholarship is proliferating in almost every global discussion.

Despite the limitations that feminists identify in their studies of international law, they do not cease constructing ways toward a more progressive and inclusive international legal realm.²⁸ Feminists continue to show faith in this system and invoke international law “as a source of transformation and empowerment” and even “as a safety net for women, who often face discrimination in national legal systems.”²⁹ They “encourage a rethinking of the discipline of international law so that it can offer a more useful framework for international and national justice.”³⁰ Feminist trust in international law should not come as a surprise. The work of international lawyers is deeply rooted in the belief that the international system has the power to ameliorate domestic circumstances.³¹ The confidence in international law is evident, especially in the area of human rights law where multiple legal mechanisms operate to ensure states’ compliance with human rights norms. International law is considered by feminists to have transformative potential for the development of human society and for the protection of human and women’s rights. Catharine MacKinnon expresses this notion when she comments on the relation between international and national legal systems, “the further away from home women go, the experience has been, the more

26. See Charlesworth, *supra* note 19, at 137 (noting “[i]nternational law has been slow to pay attention to the concept of gender.”).

27. See Robinson, *supra* note 16, at 1; see also Catharine A. MacKinnon, *Creating International Law: Gender as New Paradigm*, in NON-STATE ACTORS, SOFT LAW AND PROTECTIVE REGIMES: FROM THE MARGINS 17 (Cecilia M. Baillet ed., 2012) (stating “Gender as reality, analysis, and rubric has created some of the fastest and most far-reaching transformations in international law in our time.”).

28. Otto, *supra* note 16, at 490 (noting feminist engagements struggle with “how to engage critically with the law’s gendered languages and practices, while simultaneously seeking to use it to advance women’s rights and world peace in the present.”)

29. Charlesworth, *supra* note 19, at 141.

30. CHARLESWORTH & CHINKIN, *supra* note 7, at 1

31. See, e.g., BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 3 (2009); see also Daphne Barak-Erez, *The International Law of Human Rights and Constitutional Law: A Case Study of an Expanding Dialogue*, 2 INT’L J. CONST. L. 611, 632 (2004) (arguing that there is a “growing influence of international law on national judiciaries” and that “national courts are tending to increase their recourse to international instruments, particularly in the context of applying international human rights norms”); Anne-Marie Slaughter & William Burke-White, *The Future of International Law is Domestic (or, The European Way of Law)*, 47 HARV. INT’L L. J. 328 (2006).

rights they get.”³² In this sense, although feminist thought is subversive and fundamentally critical, it also strives for the protection and constant improvement of the international system. As the global order grows more and more chaotic and increasingly motivated by power struggles,³³ moving towards stagnation in many areas, feminist work appears to have a crucial stabilizing power. The tremendous global economic-growth potential of closing gender gaps alone validates this assumption.³⁴ It seems that now more than ever before, international law will increasingly come to depend on the answers to questions that feminist theorists pose.

The growing engagement with gender issues and feminist ideology proves its increasing relevance to *all* international lawyers. Yet, it also presents a new, interesting challenge: The fundamental difficulty currently facing feminist readings of international law seems to lie in the accessibility of feminist thought as a shared legal method.³⁵ In other words, feminist thought as a consolidated legal method is not accessible to all scholars to adopt conceptually and implement practically. Despite the apparent straightforwardness of the field, it includes divergent streams of thought that portray multiple, sometimes conflicting, ideas.³⁶ This results in a certain lack of accessibility to the field.

For many international lawyers, the first encounter with the full breadth of feminist thought in international law is methodologically confusing. There are many strands of feminism. Methods are not clearly delineated, causing feminist thought to appear to be lacking practical analytic tools. Today, more than ever before, it may be challenging to frame gender issues, analyze them systematically, and feel confident in their conclusions. The fact that often feminist methods are more commonly referred to in international legal contexts as “approaches” or “perspectives” rather than methods

32. MacKinnon *supra* note 27, at 30 (noting “[d]istance appears to attenuate the male bond, making it more likely that women’s violations will be will be recognized as real.”).

33. William Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Pluralism*, 56 HARV. INT’L L.J. 1 (2015) (examining the implications of the current redistribution of power for international law. The author claims that while international lawyers have long debated the ability of law to constrain state behavior, the debate has shifted from the power of law to the role of power within international law).

34. See, e.g., *The Power of Parity: How Advancing Women’s Equality Can Add \$12 Trillion to Global Growth*, MCKINSEY GLOB. INST. (Sept. 2015), <https://www.mckinsey.com/featured-insights/employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth> (stating “[b]oth advanced and developing countries stand to gain. In 46 of the 95 countries analyzed, the best in-region outcome could increase annual GDP in 2025 by more than 10 percent over the business-as-usual case, with the highest relative boost in India and Latin America.”).

35. Charlesworth, *Talking to Ourselves?*, *supra* note 7.

36. Charlesworth, *supra* note 19, at 141–42.

adds to this complexity.³⁷ These references imply that feminist methods are not fully understood. Beyond the hurdle of identifying the distinct guiding analytical precepts of the various views,—choosing between them presents serious difficulties.

This article aims to show that, despite their wildly different assumptions, feminist methods can still be understood as a cohesive unit by asking *the woman question*. For many international lawyers, the contribution of the international legal system depends on the law's ability to include women, to express and address the complexities involved in materializing women's equal status in society, and to construct ways of overcoming obstacles at the domestic level. The method of asking *the woman question* corresponds with these demands. *The woman question* both identifies deficiencies in international law and provides for their remedies. While encouraging lawyers to challenge the international legal system to take better account of women, this method also asks how the system may be *transformed*. It asks how the international legal system may be reinvented to remain a relevant, strong, stable, and effective legal system in establishing a normative conceptual framework to guide states in securing human rights and the rule of law. *The woman question* is a framework of critical thought that conjoins the diverse corpus of feminist approaches into a shared inquiry. It inspires the search for new possibilities to secure justice and equality for women while recognizing the power of international law to mobilize change in the world.

Part II discusses the gender perspective in international law, exploring its background and origins. It explains how gender has developed to become a central concept for examination in international law. Part III then distinguishes between the main feminist theories and their methods in the study of international law. It identifies the ways feminist theories translate into methods. This examination underscores the distinct questions that each theoretical strand offers. As shall be shown, each of the theories reveals gendered features that more traditional theories of international law tend to ignore or neglect. Although the variety of choices may not always be problematic and even instrumental for exposing gender inequalities,³⁸ it can

37. Feminist theories or approaches refer to the system of assumption and principles posed to explain the impact of gender. Methods or techniques are the specific tools or questions we use to examine the law.

38. Charlesworth and Chinkin suggest that no single feminist theory is adequate in the scrutiny of international law. See CHARLESWORTH & CHINKIN, *supra* note 7, at 23, 48–52. Although the preferred intellectual path is to choose one theory and apply its methodology throughout the research, feminist inquiry into international law leads some scholars to adopt a sporadic method of research. This approach to feminist analysis has been described by Margaret Radin as “situated judgment,” defined as using various analytic strategies rather than a single feminist theory. Margaret Jane Radin, *The Pragmatic and The Feminist*, 63 S. CAL. L. REV. 1699, 1718–19 (1990). Rosi Braidotti describes the global range of feminism as “multiple literacies” which entail “being able to engage in conversation in a variety of styles, from a variety of disciplinary angles, if possible in different languages.” Rosi Braidotti, *The Exile, the Nomad, and the Migrant: Reflections on International Feminism*, 15 WOMEN'S STUD.

have a paralyzing effect when researchers attempt to decide “which feminist view to prioritize.”³⁹ There seems to be a crucial need to articulate a clear, overarching method that would allow for a more general and common gender-based scrutiny of international law. Part IV advances the argument that *the woman question* provides a unique conceptual framework to address the most problematic, deeply rooted limitations of the international system concerning women. Asking *the woman question* in international law has considerable value in that it enables us to rise above the differences in the various feminist methods and more broadly examine the impact of the law on women while maintaining that other methods could be significant, as well, under certain circumstances.⁴⁰ Part IV also offers a three-stage model for exposing the impact of international rules on women. As noted in the beginning of this introduction, the model promoted in this article reflects a future-oriented reconstruction of the international legal regime. It is based on the idea of transformative equality, which urges transformational future thinking and acknowledges the need to redefine institutions and systems so that they will no longer rest on male paradigms. The model calls to examine new opportunities for reform by reimagining the international legal order, along with its conceptual bases,⁴¹ in ways similar, for example, to decision-making from behind the “veil of ignorance.”⁴² Though radically reimagining the system is a substantial challenge, it has great potential to transform gendered legal constructions into just and egalitarian mechanisms. Put another way, the reconstruction work proposed here means not only thinking about what could be done differently today, but what would have been done had wom-

INT’L F. 7, 10 (1992). However, the major weakness of such an approach is its eclectic nature which may result in theoretical incoherence and insecurity regarding how to go about applying a range of techniques or what would be considered as valid outcomes.

39. Barak-Erez, *supra* note 11, at 92.

40. Barak-Erez suggested using *the woman question* within constitutional law as “an interpretive principle: giving preferences to interpretive choices that are less inclined to disproportionately disadvantage women.” She argued that it is possible to apply this method “to avoid interpretive choices that disproportionately burden women and to prefer, where possible, interpretive alternatives that promote the just allocation of social burdens (and thus eventually improve also the situation of men, who are burdened by other social stereotypes and expectations).” In her view, a feminist interpretative choice should generally strive to promote protection of women and to have a “positive impact on women’s life conditions.” Barak-Erez further offers searching for solutions that express “a material interest of women as a group.” *Id.* at 95–97.

41. In this sense, this analysis expresses many of the insights and logic of radical legal feminism.

42. The “veil of ignorance” is a method in moral philosophy of determining the morality of judgments and decisions. It offers a process of decision making in which one has no knowledge regarding his or her social status (including regarding their own sex, race, social class, origin, and even conceptions of the good) so that they judge a situation in the most objective and moral manner possible. See JOHN RAWLS, A THEORY OF JUSTICE 11 (Belknap Press of Harvard Univ. Press rev. ed. 1971).

en's experiences been considered at the inception of the international legal system.⁴³

II. GENDER AND INTERNATIONAL LAW

A. From Irrelevance to Expansion

The feminist critique of international law is the result of relatively recent but significant literature.⁴⁴ The 1990s represented the beginning of what would become a new, distinct legal field of feminist research in international law.⁴⁵ Before that, for many years, it was unclear whether feminism and feminist theories had any relevance to international law.⁴⁶ International legal concepts such as sovereignty, use of force, defined territory, and state responsibility appeared “gender free” and immune to feminist inquiries.⁴⁷ International law is primarily concerned with the actions taken by nation-states, which do not have a sex or gender. The fact that the actions taken by

43. For example, some claim that to solve domestic violence, we must engage with national security bodies, both internationally and nationally. Feminist activists are also creating new partnerships with the private sector and local tech companies to address challenges in protecting victims of domestic violence. These examples show that global attempts to eliminate violence against women require rethinking of the very global institutions and global procedures that supervise states' actions. It involves asking whether new incentives are needed and whether other international bodies – such as the security council or partners from the private sector and tech industry – should take greater part in the global efforts to address domestic violence and to tackle gender inequality. See, e.g., Pnina Sharvit Baruch, *National Security Tools and the Fight Against Domestic Violence* (INSS Insight No. 1399, Nov. 5, 2020), <https://www.inss.org.il/publication/domestic-violence/?offset=2&posts=48&author=Pnina%20Sharvit%20Baruch>; Sophie Samuels, *New Browser Based “Risk Questionnaire”, to Support Victims of Domestic Violence*, SOC. IMPACT ISR., https://socialimpactil.com/i-risk/?fbclid=IwAR3nNXTBAp878PiwujKhAPWwqr0_DyxEjTDITiAWwEpnN0qQZTO2n1B4ZnE (last visited Apr. 23, 2021).

44. For an extensive examination of the feminist engagement in international law, see Otto, *supra* note 16; see also Sari Kouvo & Zoe Pearson, *Introduction*, in *FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW BETWEEN RESISTANCE AND COMPLIANCE*, *supra* note 7, at 1.

45. Doris Buss & Ambreena Manji, *Introduction*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES*, *supra* note 16, at 1 (explaining that since the early 1990s feminist scholarship on international law became “an accepted part of the legal academy”); see also Engle, *supra* note 16, at 47 (describing her work in the early 1990s in which she analyzed what appeared to be a new literature of feminist critique studies of international human rights law); Otto, *supra* note 16, at 489 (noting that by the early 1990s, more critical voices emerged, pointing to the marginalization of women and of their concerns by global institutes).

46. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 614 (questioning the “immunity” of international law to feminist analysis and explaining that international legal concepts such as sovereignty, use of force and state responsibility at first sight seem to have no impact on women); see also Charlesworth, *supra* note 19, at 137 (describing the slow response to new feminist theories).

47. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 614.

nation-states affect both sexes or genders was largely unseen.⁴⁸ In fact, to date, international legal theories focus mostly on studying and explaining the basis of states' obligations to a system that lacks a centralized authority to enforce the states' adherence to global commitments.⁴⁹ With a great deal of generalization, these theories often address the binding nature of international law and the relationship between sovereign states and international community.⁵⁰ They attend, for example, to questions about the nature and formation of international commitments and states' compliance with international legal obligations.⁵¹ In light of this understanding of international law, scholars believed that feminist theories had little to contribute to this field,⁵² and questions about the situation of women simply seemed peripheral or unsuitable. Similarly, as feminist theories pursued a very different, even political, goal, their contribution to international law was difficult to perceive or accept as legitimate in the study of international law.⁵³

Despite the apparent irrelevance of (and resistance to) questions about gender in international law, during the early 1990s, feminist voices began to emerge in international legal literature.⁵⁴ International law scholars were inspired by a broad range of feminist academics but mostly by feminist inter-

48. The only area that received increased attention was human rights law where the impact on individuals is more apparent. *Id.*; see also, Engle, *supra* note 16, at 52 (noting the influence of feminist activists on the establishment of international legal instruments that pertain to women's rights).

49. CHARLESWORTH & CHINKIN, *supra* note 7, at 23 (exploring traditional international law theories and their "limited explanatory force with respect to the position of women").

50. MALCOLM N. SHAW, INTERNATIONAL LAW 55–63 (Cambridge Univ. Press, 6th ed., 1997).

51. *Id.* at 55–63 (mentioning that the recurring themes of international law theories are the relationship between sovereign states and international society, and the search for convincing explanation for the binding quality of international law in a state-dominated world).

52. CHARLESWORTH & CHINKIN, *supra* note 7, at 25 (noting that legal scholarship theorizing international law has not addressed the situation of women worldwide, not even minimally).

53. An important exception is the International Women's Movement which had a significant impact on The Hague Conventions and on certain crucial developments in international law after World War I. Women's peace organizations sought to support the establishment of international institutions as means to advance peaceful resolutions to international disputes. See Freya Baetens, *The Forgotten Peace Conference: The 1915 International Congress of Women*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (Rüdiger Wolfrum ed., 2010); see also JANE ADAMS, EMILY BALCH, & ALICE HAMILTON, WOMEN AT THE HAGUE: THE INTERNATIONAL CONGRESS OF WOMEN AND ITS RESULTS (2003); Hilary Charlesworth, *Feminist Critiques of International Law and Their Critiques*, 13 THIRD WORLD LEGAL STUD. 1, 5 (1995) (noting that feminist theories are often criticized by the masculine academy for lack of "disinterested" scholarship and "objective" analysis); Fernando Tesón, *Feminism and International Law: A Reply*, 33 VA. J. INT'L L. 647 (1994) (arguing that feminist scholarship lacks objectivity and academic rigor, as well as presents conceptually confused theses).

54. See Charlesworth, *supra* note 19, at 137.

national relations (“IR”) experts.⁵⁵ IR scholars began asking, “Where are the women?”⁵⁶ They criticized the fact that women were so rarely heard in global political discourses and excluded from the political field.⁵⁷ They researched the causes of the marginalization of women in international politics and their subsequent implications. As the inadequacies of the system were unveiled, investigating the contribution of women to the global arena became important to IR scholars.⁵⁸ Soon afterward, feminist ideas and feminist questions started making sense to international law experts who then commenced study on how women were excluded from the international legal terrain and the initial design of this area of law. Scholars began asking whether and how international legal concepts and structures influence women or perpetuate gender inequality.⁵⁹ With women “out of the picture” since international law’s inception, Charlesworth and Christine Chinkin argued that international law was constructed upon particular male assumptions, where “man” was taken to represent “human” so that “international law [was] both built on and operates to reinforce gendered and sexed assumptions.”⁶⁰

Feminist studies suddenly became deeply relevant to international law disciplines, and feminist involvement in international law constantly grew and developed as a distinct legal field.⁶¹ One famous example of the success of feminist work in international law is the criminalization of wartime rape in international criminal tribunals and its recognition as a crime against humanity and genocide.⁶² In an ongoing effort, activists managed to bring at-

55. Such as Cynthia Enloe, V. Spike Peterson, Jan Jindy Pettman and J. Ann Tickner.

56. See, e.g., CYNTHIA ENLOE, *BANANAS, BEACHES AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* 211 (Univ. of Ca. Press 2d ed., 2014).

57. See, e.g., J. Ann Tickner, *You Just Don't Understand: Troubled Engagements between Feminists and IR Theorists*, 41 INT'L STUD. Q. 611, 628 (1997) (discussing the relationship between feminist and “mainstream” international relations scholars); see also J. TICKNER, *GENDER IN INTERNATIONAL RELATIONS* (1992); J. PETTMAN, *WORLDING WOMEN: A FEMINIST INTERNATIONAL POLITICS* (1996).

58. See, e.g., ENLOE, *supra* note 56, at 79; see also LORRAINE CODE, *ENCYCLOPEDIA OF FEMINIST THEORIES* 272 (Routledge, 2002) (arguing that feminists should not only seek to include themselves in the higher realms of policymaking and leadership, but should also search for where women have already fulfilled roles to “ensure the international system works smoothly and efficiently,” such as “the work done by diplomatic wives and military prostitutes,” and by way of example, argues that the unpaid labor of diplomatic wives served to develop and sustain an atmosphere of conductive diplomacy and stable political and military relations among nations).

59. See, e.g., CHARLESWORTH & CHINKIN, *supra* note 7, at 1.

60. *Id.* at 16.

61. See e.g., Engle, *supra* note 16 (discussing the ever-growing feminist research in international law).

62. See *Prosecutor v. Akayesu*, Case No. ICTR-96-4, Judgment (Sept. 2, 1998) (concluding that rape and sexual assault can constitute acts of genocide when “they were committed with the intent to destroy, in whole or in part, a targeted group, as such”); see also Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, art.

tention to one of the most hideous systematic crimes committed against women during armed conflict and to ensure its insertion into international criminal law. Thanks to their work, gender-based violence during war is now an issue that constitutes a significant concern for the international community.⁶³

Another major achievement of women's rights activists at the global level were the efforts that led to the groundbreaking Resolution 1325 of the Security Council on Women, Peace, and Security.⁶⁴ The resolution reaffirms women's role in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response, and post-conflict reconstruction. The resolution also recognizes the importance of women's equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. After years of feminist critical legal writing and advocacy work, the Security Council recognized women's vital role in maintaining peace and security and preventing conflicts. This work catalyzed a new set of global commitments dedicated to assuring state-actions, research, and domestic implementation to ensure women's participation.⁶⁵

To conclude, as Charlesworth and Chinkin contended almost two decades ago, while the international legal system is broad in scope, covering a wide range of normative prescriptions, it remains limited in perspective, especially towards women: "Women form over half of the world's population, but their voices, in all their variety, have been thoroughly obscured by and within the international legal order, hence they deserve to be heard and

5(g), U.N. SCOR, U.N. Doc. S/25704 (May 3, 1993); S.C. Res. 955, U.N. SCOR, 49th Sess. 3453 mtg. 1994, at 15, U.N. Doc. S/INF/50 (1996) (defining rape in the International Criminal Tribunal for Rwanda as a crime against humanity, and considering rape and forced prostitution as grave breaches of the Geneva Conventions). *See generally* Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 MICH. J. INT'L L. 1 (2008) (examining the work of organized feminism in the formation of new international criminal tribunals over the course of the 1990s).

63. *See, e.g.*, MacKinnon, *supra* note 27 (extensively examining the impressive and relatively fast development of gender-based crimes in international law).

64. S.C. Res. 1325 (Oct. 31, 2000) (outlining actions and guidelines to be taken by the Secretary General, the Security Council, UN entities and member states with goal of mainstreaming gender and assuring women's participation in peace and security policies and practices).

65. Since 2000, a further ten thematic Women, Peace and Security ("WPS") resolutions have been adopted by the UN Security Council. The resolutions focus on protection of women and children during armed conflict (especially from sexual violence), recognition of women's rights and promotion of gender equality and women's participation in conflict related decision making. These resolutions are: 1325 (2000); 1820 (2009); 1888 (2009); 1889 (2010); 1960 (2011); 2106 (2013); 2122 (2013); 2242 (2015), 2467 (2019), and 2493 (2019). For a discussion of the 1325 Resolution, *see* Christine Chinkin, *Adoption of 1325 Resolution*, in *THE OXFORD HANDBOOK OF WOMEN, PEACE, AND SECURITY* 26 (Sara E. Davies & Jacqui True eds., 2018).

their interests to be fully integrated and protected.”⁶⁶ In many ways, feminist theories attempt to remove the illusion of gender-neutrality that has dominated the field of international law. They show that the international legal system must strive to reform its gendered features to fulfill its promise as a useful framework for international and national justice. Feminists challenge whether international law has been inclusive of women, whether it is responsive to the global situation of women, and how international legal structures and norms operate regarding women and their rights. Feminist studies in international law embrace a position that “regards gender as important.”⁶⁷

B. *Feminist Critiques of Human Rights Law*

Having considered the meaning of a feminist perspective in international law, it is necessary to distinctly consider human rights law and the relevance of a feminist stance in this context.

In many ways, women have a voice in this domain. Unlike other areas of international law, human rights law has been relatively receptive to women’s concerns.⁶⁸ Human rights instruments have given individuals, including women, recognition and direct access to the international legal system and the possibility of making international legal claims.⁶⁹ These instruments allow individuals the unique opportunity to turn to international mechanisms and bring claims concerning their rights against states.⁷⁰ More generally, the international human rights system applies various mechanisms that offer special protection for women.

As a result, it is not surprising that there is some uneasiness associated with feminist critiques of human rights law. Uneasiness is understandable, as challenging human rights may appear “ungrateful,” and could potentially undermine feminist gains in this area.⁷¹ For instance, Charlesworth and Chinkin described feminist critique of *human rights* as “remarkably rare,” and noted that “those concerned with the protection of human rights in general may well be reluctant to challenge the form of human rights law at a fundamental level, fearing that such a critique may be used to reduce the hard-fought-for advances in the area.”⁷² Presenting critiques in the area of

66. CHARLESWORTH & CHINKIN, *supra* note 7, at 1.

67. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 643.

68. See Jane Connors, *NGOs and The Human Rights of Women at the United Nations*, in *THE CONSCIENCE OF THE WORLD: THE INFLUENCE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE UN SYSTEM* 147 (Peter Willetts ed., 1996) (discussing the activity of women’s groups at the international level from the early twentieth century and its gains in the range of instruments dealing with women).

69. See CHARLESWORTH & CHINKIN, *supra* note 7, at 201.

70. Including, for example, in the form of complaints and communication submitted by individuals under the human rights treaties.

71. See CHARLESWORTH & CHINKIN, *supra* note 7, at 210.

72. *Id.* at 201.

human rights law seemed counter-intuitive and raised the risk that it would weaken an already weak discourse (in terms of states' compliance, for example).

Nevertheless, feminist scholarship has profound relevance to human rights law. Despite the conceptual difficulties and practical concerns, countless international scholars have illustrated that women's rights are still restricted within human rights law.⁷³ Their work has proven that human rights law requires feminist scrutiny and would benefit from a feminist perspective. Mary Robinson, the former UN High Commissioner for Human Rights and former President of Ireland, articulated this development:

When international law became the subject of sustained feminist scholarly scrutiny and activism over a decade ago, it opened up new thinking, new language and new priorities. It became clear that international human rights law had suffered from the absence of women's voices.⁷⁴

From the moment feminist scholars and activists turned their attention toward international human rights law in the early 1990s, the scholarship in this field has proliferated with some implications on diverse areas. There are many critical gender-related findings in human rights law that underscore its importance. An initial issue in the feminist critique of human rights law has been an investigation into whether international formulations of *rights* are adequate for women.⁷⁵ In other words, are the attempts to advance these rights actually beneficial for protecting women?⁷⁶

Within feminist literature there are several viewpoints towards the "rights discourse." Mackinnon, for instance, explains that "the status and treatment of men still tacitly but authoritatively define the human universal,

73. See Charlesworth, *supra* note 19, at 170, 218 (noting that "analysis of the understanding of human rights in international law generally has shown that the definition of human rights is limited and androcentric"); see also GENDER AND HUMAN RIGHTS (Karen Knop ed., 2004); WOMEN'S RIGHTS/HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES (J. Peters & A. Wolper eds, 1995). See generally HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca Cook ed., 1994) (assessing human rights law in light of women's experiences and concerns).

74. See Robinson, *supra* note 16, at v.

75. See Nicola Lacey, *Feminist Legal Theory and the Rights of Women*, in GENDER AND HUMAN RIGHTS, *supra* note 73, at 13, 16 (critically examining the "rights discourse" in feminist legal and social theory).

76. See Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87, 104 (1993) (noting "the criticism focuses on the inability of rights discourse to bridge the gap between the individual and the social"); see also CHARLESWORTH & CHINKIN, *supra* note 7, at 208 (exploring "feminist critiques of rights and whether international formulations of rights are useful for women" examining critiques that suggest for example that women's experiences and concerns might not translate well into a narrow language of rights).

eliding the particularity of being a man.”⁷⁷ Human rights were predominantly envisioned as men’s rights and were designed to address men’s concerns. Mackinnon points to the limits of our understanding of “torture,” as an example of this difficulty, and highlights the masculine descriptions that define inhuman treatment.⁷⁸ Other scholars similarly argue that the rights discourse itself over-simplifies the complex power relations between men and women,⁷⁹ and a continuing focus on rights acquisition may not be as valuable as previously thought to the position of women in practice.⁸⁰ Certainly, the language of “rights” can often be too narrow and may fail to reflect women’s experiences.⁸¹ These critiques highlight the importance of questioning the efficacy of human rights law for women.⁸² The discussion over human rights and women requires constant rethinking and adjustment. For, in reality, the current system of human rights may not be doing justice with women’s specific concerns.⁸³ This limited nature of human rights law ought to be recognized.

Moreover, human rights law has been shown to be particularly vulnerable to non-compliance especially when it comes to the protection of women’s rights.⁸⁴ Historical accounts of the international legal system indicate that “human rights law is under constant challenge.”⁸⁵ While most states formally accept the international regime, actual compliance is often undermined by extensive reservations, derogation provisions (that permit the prevalence of national law), and inadequate national implementation measures.⁸⁶ The issue of non-compliance is indeed one of the known weak-

77. CATHARINE MACKINNON, *ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES* 3 (2006).

78. MacKinnon demonstrates that women’s accounts of torture are not regarded as such despite being brutal and inhuman. She then shows that the definition of “torture” should be broadly construed to include systematic sexual abuse. *Id.* at 17–27.

79. See Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEG. F. 59 (1989) (questioning whether critical social theory, which has been an interest for critical legal theorists, is helpful to understanding power and structural inequalities).

80. See E. KINGDOM, *WHAT’S WRONG WITH RIGHTS? PROBLEMS OF FEMINIST POLITICS OF LAW* (1992) (discussing the problem of the rights discourse and how it reduces the knowledge of feminism and women’s power).

81. See generally Lacey, *supra* note 75.

82. See CHARLESWORTH & CHINKIN, *supra* note 7, at 208 (arguing that campaigns for women’s human rights can play a useful role in advancing women’s equality, although they agree that “the limited nature of rights must be acknowledged.”).

83. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 625 (exploring the normative structure of international law noting that it “has allowed issues of particular concern to women to be either ignored or undermined”).

84. See HENRY STEINER, PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS LAW IN CONTEXT: LAW, POLITICS, MORALS* 1124 (Oxford Univ. Press, 3d ed., 2008) (examining the use of reservations).

85. CHARLESWORTH & CHINKIN, *supra* note 7, 207.

86. *Id.* at 207–08.

nesses of human rights law, yet women remain a group for which non-compliance is typically aggravated.⁸⁷ The reasons for and implications of this special vulnerability must also be taken into account and demonstrate the importance of feminist inquiries in human rights law.

Finally, the feminist critiques of human rights law have been tremendously significant, as they have illuminated liberal distinctions of public versus private spheres operating in this field.⁸⁸ Madhavi Sunder has famously shown that many liberal states continue to give authority in the private sphere to religious institutions that openly aspire to maintain the unequal position of women.⁸⁹ The public-private distinction is often used to associate women with the private and the minimally-regulated—and often devalued—areas of home, hearth, and family, whereas men and masculine ideas dominate in the public sphere of civil, political, and economic life.⁹⁰ International law, in general, and human rights law, in particular, was formed on the basis of these liberal distinctions in ways that perpetuate women's inequality.⁹¹ In practice, this means that "'private' issues are left to national, rather than international, regulation."⁹² Many of these distinctions thus determine the issues that receive international supervision and those that are left out of the international legal realm. Feminist writers have further observed that what is considered "public" in one context may be categorized as "private" in an-

87. In that regard, Charlesworth and Chinkin warn that "[t]he vulnerability of human rights law to non-observance is exacerbated when the law touches women's lives." *Id.* at 208; see also Robinson, *supra* note 16, vi (noting that "[f]ormal state and institutional support for the idea and language of human rights is overwhelming. [But]. . . [h]ow can the current international consensus on the human rights of women be translated into meaningful change? . . . [W]e may well be entering into a new era of human rights and international law where the formal 'success' of feminists and other activists pose unexpected challenges to future change").

88. See, e.g., Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 73, at 85, 85; Karen Engle, *After the Collapse of the Public/Private Distinction: Strategizing Women's Rights*, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 143, 148–50 (D.G. Dallmeyer ed., 1993).

89. Madhavi Sunder, *Keeping Faith: Reconciling Women's Human Rights and Religion*, in RELIGION AND HUMAN RIGHTS: AN INTRODUCTION 281, 282 (John Witte & Christian Green eds., 2013) (discussing the private/public distinction and how it influences women's enjoyment of freedom of religion); see also Romany, *supra* note 76, at 87 (arguing that the public/private distinction has served to neglect protection of women's rights in the private familial sphere).

90. Some feminist scholars have demonstrated that civil and political rights have been regarded as belonging to public life, while protection of rights in the private sphere of familial relationships has been neglected, and thus basic rights of women have suffered. See, e.g., Romany, *supra* note 76, at 87.

91. *Id.*; see also Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 640 (arguing that the dichotomy between public and private worlds has undermined the operation of international law and has made "the work and needs of women invisible.").

92. CHARLESWORTH & CHINKIN, *supra* note 7, at 56.

other, but women's issues remain frequently construed as private and untouchable, often times justified by states on the basis of protection of family values.⁹³ Therefore, feminist studies of human rights law try to identify such distinctions to extend international legal regulation on matters that were wrongfully classified as private.⁹⁴

Feminist literature also elucidates many other deficiencies of human rights law when it comes to the protection of women's rights including: the marginalization of women's issues within "mainstream" human rights bodies—that often outline the scope of protection of human rights without properly considering the possible implications for women;⁹⁵ the relatively weak provisions that ensure women's equal rights in international instruments, which, according to some scholars, has reduced the force of international legal enforcement and implementation of these rights;⁹⁶ the ways in which women's perspectives were excluded from the initial formation of the field.⁹⁷ Even in the middle of the twentieth century, in critical moments in the creation of international human rights law, a consistent feature remained the absence of women. For example, in 1945, the UN Charter, was among the first global instruments to recognize the importance of the protection of human rights by states, yet it was signed mostly by men (only four women signed the Charter out of 850 delegates).⁹⁸

These limitations show that the feminist perspective in human rights law is essential and relevant. Human rights law continues to be an important area for scrutiny.⁹⁹ Since the work of human rights bodies catalyzes consid-

93. *Id.* at 59; *see also* H. MOORE, FEMINISM AND ANTHROPOLOGY 54–59 (1988).

94. CHARLESWORTH & CHINKIN, *supra* note 7, at 59.

95. The Human Rights Committee, for example, discusses the scope of the right to freedom of religion or belief in its general comments but has in many ways failed to properly address the increased risk for women in the enjoyment of their liberty to hold and manifest a belief of their choices. *See* Cochav Elkayam Levy, *Where is God When We Need Her? Women's Right to Freedom of Religion or Belief as Key to Promoting Gender Equality*, 95 TUL. L. REV. (forthcoming 2021); *see also* Hilary Charlesworth & Christine Chinkin, *The New United Nations "Gender Architecture": A Room with a View?*, 17 MAX PLANCK Y.B. U.N. L. 2 (2013) (noting that the Human Rights Committee explains the scope of the right to life but is making no reference to the issue of infanticide); *see also* CHARLESWORTH & CHINKIN, *supra* note 7, at 218–20 (discussing the "[m]arginalization of women's rights").

96. *See, e.g.*, Anne Bayefsky, *Making the Human Rights Treaties Work*, 26 STUD. TRANSNAT'L LEGAL POL'Y 229 (1994); CHARLESWORTH & CHINKIN, *supra* note 7, at 220 (noting that the operative language of the Women's Convention is much weaker compared, for example, with the Race Convention).

97. *See, e.g.*, Otto, *supra* note 16; *see also* CHARLESWORTH & CHINKIN, *supra* note 7, at 231–44 (exploring the development of human rights as men's rights).

98. Centre for International Studies and Diplomacy, *Women and the UN Charter*, SOAS UNIV. LONDON, <https://www.soas.ac.uk/cisd/research/women-in-diplomacy/women-in-the-un-charter/> (last visited Apr. 23, 2021).

99. *See, e.g.*, Comm. on the Elimination of Discrimination Against Women, *General Recommendation on Economic Consequences of Marriage and its Dissolution: Concept Note*,

erable progress in advancing gender equality, the purpose of the feminist analysis in human rights law is not merely critical but also constructive (aiming to inspire developments that would achieve material improvements in women's lives). The doctrine still has a long way to go before human rights law can become defined in new, fully inclusive ways.

III. FEMINIST METHODS IN INTERNATIONAL LAW

So far, this article has discussed feminist ideas in international law as if feminism is one unified theory. The reference to feminist legal theory as a unitary genre is, in the words of Nicola Lacey, a "necessary and useful device." As she notes, "We need to generalize among feminist theories if we are going to engage in the project of characterizing the genre."¹⁰⁰ Yet, it is more accurate to talk about legal feminisms. Despite the apparent commonality in the feminist endeavor, "'feminism' does not refer to a single theory" or methodology.¹⁰¹ Instead, a variety of feminist theories have been applied to accommodate the constructions of international law.¹⁰² Identifying the dominant strands which inform feminist doing in law is empowering and critical to our understanding and commitment to the research in the field. The goal of this section is to discuss these theories and highlight their methods.

Christine Chinkin and Hillary Charlesworth first famously explored these strands in 2001; their analysis provided the bedrock of analysis for feminism in international law and serve as the basis of the analysis here.

This part explores four theoretical emphases of the main streams of thought in feminist legal theory, each of them of relevance to the discussion of feminist methods: liberal feminism, cultural feminism, radical feminism, and postmodern/intersectional feminisms. It distinguishes between the corresponding methods and between the set of questions that each approach challenges us to ask, then it applies each theory to a modern example.¹⁰³ The different conceptual concerns of the various feminist theories complement each other and interrelate in many respects, but each lacks the ability to fully address women's concerns. Understanding them each separately creates a fuller picture of the challenges involved in achieving gender

U.N. Doc. CEDAW/C/2009/II/WP.2/R (June 2009) (discussing the notable progress in the advancement of women's rights in the area of family law).

100. Lacey, *supra* note 75, at 17.

101. Barak-Erez, *supra* note 11, at 86.

102. In their book, Charlesworth and Chinkin explain a range of feminist theories that could be used to reveal gender bias of international law sources and their scholarly work provides the groundwork for the exploration here. See CHARLESWORTH & CHINKIN, *supra* note 7, at 38.

103. Hilary Charlesworth notes in this regard that "the technique of asking questions and challenging assumptions about international law may be more valuable than generating grand theories of women's oppression. See Charlesworth, *supra* note 15, at 384.

equality.¹⁰⁴ Of course, even these understandings offer only a glimpse into the existing varied and rich feminist discourse of legal academia.

A. *Liberal Feminism – Seeking and Eliminating Differences*

Liberal feminism relies on the idea that men and women are fundamentally equal. It is rooted in philosophical and political liberal thought,¹⁰⁵ which centers on notions of individual autonomy, universal rights and democracy, and on the core belief that all people are created equal. Liberal theory advances the idea that the inherent nature of people mandates “equal treatment of all as a matter of legal, political, and moral right, irrespective of the particular characteristics” of the individual.¹⁰⁶ Based on this reasoning, early feminists argued that women ought to be treated as autonomous individuals and deserve equal rights under the law.¹⁰⁷ Liberal feminism thus often emphasizes that women can perform exactly as men, given identical opportunities.¹⁰⁸ It focuses on “equal opportunities and denies stereotypical distinctions between men and women.”¹⁰⁹ For liberal feminists, *equality means equal treatment*, trusting that women would reach their full potential in society if they were treated in the same way as men.

As a result, liberal feminists target laws that discriminate against women. Such laws may prohibit women from actions which are permitted for men (such as voting, assuming public roles, acquiring education, inheriting property, enjoying certain public services). For liberal feminists, “A state’s role is to ensure that gender neutral laws exist and that women have access to the protection of these laws.”¹¹⁰ They assume that a state can

104. Diane Otto offers an interesting observation of feminist thought in international law suggesting that it is:

[M]ore useful, and apt, to think of feminist approaches to international law as a shifting and contested network of ideas and allegiances that, in seeking to make sex/gender a central analytical category, draw on multiple and sometimes competing feminist perspectives and engage with other critical traditions in law. This approach makes visible those less dominant feminist ideas that remain engaged in a variety of ways, providing an abundant reservoir of historical and theoretical knowledge, grounded analyses, and experiential evidence with the power to trouble masculinist certitudes.”

Otto, *supra* note 16, at 491–92.

105. For an overview of liberal feminism see Lacey, *supra* note 75, 19–22.

106. Adam Thurschwell, *Radical Feminist Liberalism: At the Heart of Freedom: Feminism, Sex, & Equality*, 51 RUTGERS L. REV. 745, 747 (1999); see also R. C. Preston & Ronald Z. Ahrens, *United Nations Convention Documents in Light of Feminist Theory*, 8 MICH. J. GENDER & L. 1, 7 (2001).

107. See Thurschwell, *supra* note 106, at 749 (discussing autonomy of the individual as part of liberal philosophy in the context of feminism).

108. CHARLESWORTH & CHINKIN, *supra* note 7, at 39.

109. Barak-Erez, *supra* note 11, at 86.

110. Preston & Ahrens, *supra* note 106, at 7.

perform as a neutral actor, “free from gender bias and able to enforce the law equally to both men and women.”¹¹¹ The liberal feminist approach therefore insists on *gender neutrality*,¹¹² and demands that the law fulfill its promise of objectivity and rationality.¹¹³ It does not provide imagery of a different system but works to improve existing legal structures. For liberal feminists, equality can be achieved if we invest enough effort. In this sense, “sexism is regarded as a bias that can be eliminated by more rational inquiry.”¹¹⁴

Liberal feminism has had a significant influence in international law contexts. The international community’s commitment to prohibiting sex-based discrimination and eradicating biased norms is very much liberal in character.¹¹⁵ Liberal feminism has influenced various international reforms and most often conceived of equality rights as prohibiting government actors from discriminating against women (rather than requiring a fuller understanding of the promise to gender equality and women’s enjoyment of real economic, social, cultural, and political power).¹¹⁶ The focus on sex equality rights is apparent in the major human rights instruments which tend to employ a sameness model and seek gender neutral arrangements.¹¹⁷ CEDAW is a useful example of feminist liberalism as well, as its provisions largely focus on equal treatment.¹¹⁸ Although CEDAW does go beyond liberal notions and represents more radical ideas of equality, it has generally continued the liberal tradition of equality by primarily seeking to abolish “discrimination against women.”¹¹⁹

Therefore, as a method for a critical study of international law, liberal feminism advises that we focus on removing legal barriers that prevent equal treatment in the public sphere and on *eliminating distinctions in the law between men and women with the goal of achieving gender neutrali-*

111. *Id.*

112. *See* Barak-Erez, *supra* note 11, at 86.

113. CHARLESWORTH & CHINKIN, *supra* note 7, at 38 (also noting that “liberal feminists typically accept the language and aims of the existing domestic legal order.”).

114. *Id.* at 40.

115. *Id.*; *see also* Hilary Charlesworth, *What are Women’s International Human Rights?*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 73, at 58, 63–64.

116. CHARLESWORTH & CHINKIN, *supra* note 7, at 229 (discussing the centrality of the norm of non-discrimination in international human rights law).

117. *Id.* at 213.

118. Comm. on the Elimination of Discrimination against Women, *CEDAW General Recommendation No. 19: Violence Against Women*, U.N. Doc. CEDAW/A/47/38 (1979), <https://www.refworld.org/docid/453882a422.html> [hereinafter CEDAW]; *see also* MACKINNON, *supra* note 77 (noting that “most of CEDAW’s active provisions admittedly grant women equality of rights in gender-neutral ways”).

119. CEDAW, *supra* note 118, art. 1.

ty.¹²⁰ Knowing that the law was created mostly by men, liberal feminists begin by questioning the law's claim for objectivity.¹²¹ Liberal feminists see the male-orientation of the law as a methodological problem which "once identified, can be eradicated."¹²² In other words, in a feminist legal analysis of international law, the methodological goal of liberal feminism is *to achieve neutral legal outcomes* by challenging differences and distinctions that discriminate against women. The liberal approach continues to play a particularly important role in the global arena, which is unfortunately still very much preoccupied with combating domestic recognition of traditional discriminatory legal distinctions between men and women and of religious laws that frequently restrict women's freedoms in many countries around the world.¹²³

However, critics of the liberal approach argue that it does not take women very far in their global aspirations for equality.¹²⁴ First, identifying differentiation as a method may overlook areas where there are justified reasons to acknowledge differences.¹²⁵ For example, pregnancy or motherhood are mostly not considered a justification for treating women differently by traditional liberal feminists.¹²⁶ Because of this, Charlesworth and Chinkin, for example, note that "the approach of insisting that women and men be treated similarly falters when women and men are not in the same position either because of physical difference or because of structural dis-

120. CHARLESWORTH & CHINKIN, *supra* note 7, at 39.

121. *Id.* at 40.

122. *Id.* at 40 (noting Sandra Harding's observation that "bad law is the problem, not law-as-usual").

123. See, e.g., Heiner Bielefeldt (Special Rapporteur on Freedom of Religion or Belief), *Addressing the Interplay of Freedom of Religion or Belief and Equality between Men and Women*, U.N. Doc. A/68/290, ¶ 32 (Dec. 26, 2013) (referring generally to conflicts between gender equality and freedom of religion); see also Abdelfattah Amor (Special Rapporteur on Freedom of Religion or Belief), *Study on Freedom or Belief and the Status of Women in the Light of Religion and Traditions*, U.N. Doc. E/CN.4/2002/73/Add.2 (Apr. 24, 2009) (noting that "at the dawn of this third millennium, many women across the world suffer discrimination in their private and family lives and in relation to their status in society. Such discrimination, which is deeply rooted in the dominant culture of some countries, is largely based on or imputed to religion. It is often trivialized and tolerated by the State or society and sometimes sanctioned by law. In some cases, it assumes very cruel forms and denies women their most fundamental rights, such as the right to life, integrity or dignity.").

124. See, e.g., Nicola Lacey, *Legislation Against Sex Discrimination: Questions from A Feminist Perspective*, 14 J.L. & Soc'y 411, 415–20 (1987); see also *Introduction*, in FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER 5 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) (explaining that equality rights doctrine provides a problematic foundation for legal reform).

125. Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1122 (1986).

126. *Id.*; see also Barak-Erez, *supra* note 11, 91–92.

advantage.”¹²⁷ Second, the liberal method’s focus on non-discrimination requires women to conform to existing male-defined societal norms that perpetuate inequality. As such, it essentially demands that women aspire to become “the same as men,” thus turning themselves into the less desired standard.¹²⁸ The liberal approach strives for a somewhat limited legal reform that would guarantee that women are treated equally, yet without necessarily addressing women’s own specific needs, life conditions, and experiences. Finally, feminists have been skeptical of the very idea of gender neutrality in law and legal analysis. Lacey, for example, questions the analytic integrity of liberalism’s promise to gender-neutral legal constructions. She has warned that in a world in which sex and gender continue to exist as a basis for social differentiation which notoriously affect women, gender-neutral language falsely constructs the law as neutral and just.¹²⁹

In relation to international law, Lacey asks whether universal human rights instruments need to be replaced or supplemented in certain areas to recognize special rights to women or other groups (such as collective remedial rights that would promise affirmative action).¹³⁰ Thus, although the liberal feminist perspective seeks gender neutrality, it may entail disproportionate burdens on women and conceal certain privileges of social groups that enjoy political and social power.¹³¹ Liberal feminists might overlook instances in which the law lacks specific reference to women or circumstances in which more fundamental, transformative structural and legal changes are needed.

Lastly, a general feminist critique of liberal thought confronts the very fundamental reliance of liberalism on private and public distinctions.¹³² Liberal theories assume that civil, political and economic issues belong to

127. CHARLESWORTH & CHINKIN, *supra* note 7, at 39; *see also* CATHARINE MACKINNON, *Difference and Dominance: On Sex Discrimination*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND THE LAW* 32 (1987) (noting that following the logic of equality and nondiscrimination doctrine, pregnancy is a difference which leads to the ironic result that giving women what they need is discriminatory).

128. MACKINNON, *supra* note 127, at 38 (claiming that equality doctrine and the reliance on preventing sex discrimination has been utterly ineffective in attending to women’s needs and especially to the need to respond to unequal and abusive social conditions that exist for women). In addition, according to Nicola Lacey, the liberal approach only allows women access to a world that is already being dominated by men. She further notes that sex and gender have shaped the world in ways that have been unjust not only in differentiation but in domination, oppression and discrimination. NICOLA LACEY, *supra* note 124, at 420; CHARLESWORTH & CHINKIN, *supra* note 7, at 40.

129. NICOLA LACEY, *Feminist Legal Theory Beyond Neutrality*, in *UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY* 188 (1998).

130. *See* Lacey, *supra* note 75, at 22.

131. Lacey, *supra* note 124, at 415–20.

132. For a detailed discussion of liberal feminism and this criticism, *see, e.g.*, LACEY, *supra* note 129, at 191; Lacey, *supra* note 75, at 19–20.

the public-regulated world, while private lives and spheres are subject to minimal state intervention and exclusively serve and mandate respect to the autonomous individual and individual freedoms. Feminists have argued such distinctions have left many concerns regarding women's lives and regarding the protection of women's rights within private spheres - rendering them invisible - and outside the ambit of international law, including, for instance, in areas such as familial relationships and domestic violence.¹³³ Yet, despite critiques, liberal feminism's goal to achieve gender-neutral outcomes and to eradicate discriminatory legal distinctions continues to inspire significant reforms in many countries around the world in which women suffer from traditional discriminatory laws and practices.

B. *Cultural Feminism – Questioning the Masculinity of Legal Rules and Searching for Feminine Modes of Justice*

Cultural feminism argues that women are inherently different from men. It focuses on perspectives that have been identified as unique to women (though not necessarily promoting an essentialist argument).¹³⁴ It brings attention to the “different voice” of women,¹³⁵ emphasizing their adherence to an “ethic of care.”¹³⁶ According to cultural feminists, “women reason differently than men,” and often “prioritize values of nurturing, caring, conciliation, and responsibility.”¹³⁷ Some cultural feminists seek to ex-

133. The CEDAW does not explicitly mention the term “domestic violence.” This issue has been brought to global attention only thanks to the tireless work of feminist activists and the members of the CEDAW Committee. See CATHARINE MACKINNON, *TOWARDS A FEMINIST THEORY OF THE STATE* 187–90 (1989) (suggesting that the “public,” state, government, and the law, are constructed as the opposite of the family, which has been associated with the private sphere. MacKinnon argues for greater regulation of matters involving home and family); see Lacey, *supra* note 75, at 21–22 (discussing feminist criticism of liberal theory).

134. See CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (3d ed., 2003). See generally CHARLESWORTH & CHINKIN, *supra* note 7, at 40.

135. See GILLIGAN, *supra* note 134. As expounded by Charlesworth and Chinkin, Carol Gilligan, a professor of psychology at New York University, has been instrumental in developing this school of thought. Her famous work “In a Different Voice,” found that while boys tend to be more abstract and rational, girls demonstrate more contextual reasoning and tend to express values of caring and empathy. The problem she identified is that psychological theories valued the masculine mode of reasoning as more morally developed and mature, whereas feminine reasoning was considered inferior in many ways. Her work inspired legal scholars to argue that the law gives similar preference to masculinity and to masculine ideas. CHARLESWORTH & CHINKIN, *supra* note 7, at 40.

136. GILLIGAN, *supra* note 134 (arguing that many women handle problems from an “ethic of care” rather than a sense of justice); see, e.g., VIRGINIA HELD, *FEMINIST MORALITY: TRANSFORMING CULTURE, SOCIETY, AND POLITICS* (1993); NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION* (1984).

137. Preston & Ahrens, *supra* note 106, at 8; see generally GILLIGAN, *supra* note 134.

plore, for example, “women’s culture” repressed feminine attributes, or other women’s values.¹³⁸ They argue that women may also reach moral decisions differently and have different ideas than men concerning justice.¹³⁹ Cultural feminism in this sense is not concerned with culture but with culturally associated qualities particular to women. The cultural approach has been highly influential in feminist legal theory. Unlike liberal feminism, it recognizes the need to emphasize that women have different qualities than those of men. Cultural feminists, in fact, believe that the law and the legal system should not only acknowledge but also celebrate these differences.¹⁴⁰

Cultural feminism lays the claim that the current traditional schemes of justice are male-oriented and marginalize women’s ethical and moral convictions. It criticizes the hierarchal organization of law, its adversarial format, and its aim toward abstract resolution of competing rights.¹⁴¹ Applied to international law, cultural feminism as a method *questions the masculinity of international legal rules, seeks the voice of women in all of their diversity*, while simultaneously devising *feminine modes of justice*. The cultural feminist method includes understanding how ideas of masculinity and femininity shape the law. Cultural feminism aspires to inclusivity, femininity, and diversity. Cultural feminists are not necessarily essentialists but operate from the understanding that women’s voices were missing for too long, and their concerns were considered illegitimate. Thus, a cultural feminist method seeks to bring these voices and encourage inclusive dialogue.

Cultural feminist claims have motivated feminist jurists, for example, to challenge adversarial legal procedures popular in mainstream Western systems and to propose alternatives to adversarial litigation such as mediation and conciliation processes, which have gained recognition and respect

138. See NODDINGS, *supra* note 136; Nel Noddings, *The Language of Care Ethics*, KNOWLEDGE QUEST 52 (2012). Nicola Lacey refers to cultural feminists as a branch of radical feminism, seeing them as seeking to embrace an “essential” sex difference approach to emphasize that “women’s natural nurturing role in bearing and rearing children gives them a distinctive empathy with others and the world” while others assert a more historical or psychoanalytic perspective. Lacey, *supra* note 128, at 23.

139. Preston & Ahrens, *supra* note 106, at 8.

140. *Id.* at 8 (“Cultural Feminism’s goal does not lie in merely identifying the unique traits of women – traditional patriarchy has already done that – but in celebrating them and recognizing them as strengths.”).

141. See, e.g., CARRIE J. MENKEL-MEADOW, LELA PORTER LOVE, ANDREA KUPFER SCHNEIDER & MICHAEL MOFFITT, *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* (3d ed., 2019); CHARLESWORTH & CHINKIN, *supra* note 7, at 40 (noting that cultural feminists identify that “the language and imagery of the law underscore its maleness: it lays claim to rationality, objectivity and abstractness, characteristics traditionally associated with men, and is defined in contrast to emotion, subjectivity and contextualized thinking – the province of women.”).

in the international arena.¹⁴² For example, a cultural feminist approach can be seen as critically important for some scholars in the easement of conflicts, such as in the case of the Troubles in Northern Ireland.¹⁴³ Northern Irish women's "soft way of doing hard things" has been widely credited as leading to the success of the Good Friday Agreement.¹⁴⁴

However, cultural feminism is controversial. Charlesworth, for example, notes that taking cultural feminism too far might confine all women to particular modes of reasoning and men to another.¹⁴⁵ Additionally, radical feminism, discussed in the next section, points out the risks in using "feminine" methods to resolve disputes between two parties in genuinely unequal positions and stresses that these methods may perpetuate inequality instead of improving women's status.¹⁴⁶ MacKinnon warns that the "feminine" voice of women is currently defined by a patriarchal culture and not by women themselves. Therefore, affirming women's differences may mean affirming their powerlessness.¹⁴⁷ Relying on stereotypes about women's nature could inadvertently reinforce problematic gender norms. That said, it is important to stress that cultural feminism has the power to expose and transform many hidden social assumptions about the role of men and women in our society. It is also an empowering method that legitimizes the voices of women, creating a space for new conceptions of justice and novel theories of human development.

C. Radical Feminism – Identifying and Confronting Male Domination over Women

Radical feminism explains women's inequality in terms of power, namely, as a result of men's domination over women.¹⁴⁸ It concentrates on the differences in power between men and women and critiques "not only

142. See, e.g., MENKEL-MEADOW ET AL., *supra* note 141; Lynne N. Henderson, *supra* note 144; Kate McCabe, *A Forum for Women's Voices: Mediation Through a Feminist Jurisprudential Lens*, 21 N. ILL. U. L. REV. 459, 472 (2001); YOSHIFUMI TANAKA, *THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES* (2018).

143. See Amanda E. Donahoe, "Wee Women's Work:" Women and Peacebuilding in Northern Ireland (Jan. 1, 2013) (unpublished Ph.D. dissertation, Univ. Denver), <https://www.nirwn.org/wp-content/uploads/2016/12/Wee-Womens-Work-Women-and-Peacebuilding-in-Northern-Ireland.pdf>.

144. Catherine Turner, *Soft Ways of Doing Hard Things: Women Mediators and the Question of Gender in Mediation*, 8 PEACEBUILDING 383, 395 (2020).

145. Hilary Charlesworth, *Feminist Approaches to International Law*, AUDIOVISUAL LIBR. INT'L L. (Jan. 6, 2012), https://legal.un.org/avl/lis/Charlesworth_IL.html#.

146. CHARLESWORTH & CHINKIN, *supra* note 7, at 42; see e.g., HILARY ASTOR & CHRISTINE M. CHINKIN, *DISPUTE RESOLUTION IN AUSTRALIA* 109–12 (1992).

147. MACKINNON, *supra* note 127, at 39.

148. See, e.g., *id.* at 32; MACKINNON, *supra* note 133; MACKINNON, *supra* note 77. For a discussion on radical feminism see CHARLESWORTH & CHINKIN, *supra* note 7, at 42–44.

physical power, but social, cultural, economic and sexual power as well.”¹⁴⁹ For radical feminists, sex is a distinction, and sexual difference is a social construction, more radical in defining social positioning than other distinctions, such as race, class, or ethnic differences.¹⁵⁰ In this sense, because sex presupposes difference and equality assumes sameness, the entire doctrine of sex equality is understood by radical feminists as a contradiction in terms, an oxymoron, in ways that explain why attempts to promote sexual equality or equal rights for women continue to fail.¹⁵¹ The most problematic feature that they identify in this doctrine is that its ultimate goal is that women be the same as men. Men become the standard for women and for the human more generally.¹⁵² By contrast, radical feminists pose that in our quest for a gender just society we ought to demand that women, and essentially persons of all genders, will not be socially prevented from experiencing, on the basis of a condition of birth, physical and economic security, self-expression, respect and dignity, and will be granted equal power in social life. This leads radical feminist to center their efforts on fighting the most pervasive gender-based abuses and on improving women’s material desperation.¹⁵³

Radical feminism is the result of the contributions of many prominent scholars, but most identified with the work of MacKinnon,¹⁵⁴ who argues that when considering the differences between men and women in the law, we should actually focus on *the question of power and its unequal distribution*.¹⁵⁵ MacKinnon conceived a theory of male dominance over women that is based upon social construction. In MacKinnon’s work, women’s oppression is a structural social relation of subordination in ways that render sex difference similar to Marxist ideas of class difference.¹⁵⁶ She contends that sexuality is to feminism what work is to Marxism—that which is most one’s own but most taken away by the social relations, the theories criticize.¹⁵⁷ In her view, female sexuality was constructed by men for their pleasure and

149. Preston & Ahrens, *supra* note 106, at 9; see also Lacey, *supra* note 75, at 23.

150. See, e.g., Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1982).

151. MACKINNON, *supra* note 127, at 34–35.

152. *Id.* at 32–34 (“ . . . man has become the measure of all things. Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure.”).

153. *Id.* at 32–45

154. For the most influential work of Radical Feminism in legal scholarship, see MACKINNON, *supra* note 133; MACKINNON, *supra* note 77; MACKINNON, *supra* note 159. See also Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. (1988); Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 WOMEN’S RTS. L. REP. 151 (1992).

155. MACKINNON, *supra* note 127, at 39.

156. *Id.* at 48.

157. *Id.*

benefit and persists by social processes that appear neutral, universal, or even objective.¹⁵⁸ According to radical feminists, the law echoes the power relations between men and women. It reflects the power that men have and which is used to oppress women.¹⁵⁹ As MacKinnon points out, the law has been designed to keep women “out and down” by defending and enforcing a hierarchical system based on gender and sex that treats women as an inferior class.¹⁶⁰

Radical feminism has challenged both the work of liberal and cultural feminists. From a radical lens, the liberal conception of feminism and equality for women involves acceptance of and adherence to existing societal norms of male dominance.¹⁶¹ Radical feminists criticize liberal feminism for adopting masculine measures to define women’s lives and for demanding that women essentially fight for equality only to be the same as men.¹⁶² Additionally, for radical feminists, the cultural feminist approach may also fail when it does not consider women’s subordination. In radical feminism, feminine qualities, such as caring, are certainly not inherent or chosen by women but were imposed on women within the context of the patriarchal societies in which they live and assigned to women from a masculine view of women’s personhood.¹⁶³ Because both liberal and cultural feminism fail to take into account the societal structures which created gendered norms, radical feminism argues either approach fails to fully capture the experience of being a woman. As MacKinnon bluntly argues: “Take your foot off our necks; then we will see in what tongue women speak.”¹⁶⁴

Radical feminists ultimately envision a world where women have equal power in social life.¹⁶⁵ They stress the liberation of women from unequal and abusive conditions. Radical feminism’s most central goal is to liberate women from subjection to violence and societal subordination to men.¹⁶⁶ From a radical perspective, feminist efforts for social, political, or legal reform should concentrate on women’s *freedom from systematic subordination*.¹⁶⁷ As long as dominance and structural sex difference continues to be

158. MacKinnon, *supra* note 150, at 658.

159. MACKINNON, *supra* note 127, at 40–45; *see also* CHARLESWORTH & CHINKIN, *supra* note 7, at 42–43 (according to the authors, radical feminism understands inequality as “political and sexual in nature.”).

160. MACKINNON, *supra* note 127, at 205.

161. *Id.* at 34.

162. *Id.* at 33.

163. CHARLESWORTH & CHINKIN, *supra* note 7, at 42.

164. MACKINNON, *supra* note 127, at 45.

165. MACKINNON, *supra* note 127, at 45.

166. BARAK-EREZ, *supra* note 11, at 89.

167. CHARLESWORTH & CHINKIN, *supra* note 7, at 43.

the main obstacle to overcome, other goals appear peripheral or, at least, not similarly important.

Applied to international law, radical feminism is thus not concerned with “theoretical equality or rights guaranteed on paper”¹⁶⁸ but, rather, with ensuring the very fundamental, even physical, ability of women to enjoy their rights and opportunities, requiring defining new paradigms to ensure women obtain real power.¹⁶⁹ Radical feminists have focused their attention in three main areas: (1) women’s reproductive capacity, including a woman’s right to have an abortion, to receive full access to birth control, and to have complete control over her body; (2) eliminating violence against women and gender-based crimes; and (3) confronting traditional/institutional power structures.¹⁷⁰

As a result, radical feminists have led global efforts to eradicate violence against women. Through the radical feminist lens, violence is “a means by which men keep women from attaining power.”¹⁷¹ These efforts have proved particularly successful in international human rights law and international criminal law.¹⁷² Radical feminists have also targeted pornography, rape, sexual harassment, and physical abuse as forms of dominance that block women from assuming real societal equality.¹⁷³ Thanks to their work, it is now globally accepted that violence against women is one of the

168. See Preston & Ahrens, *supra* note 106, at 10.

169. See MACKINNON, *supra* note 77; see also *id.* (explaining that according to radical feminists “it is not enough for women to have the same potential opportunities as men. Women are not equal, unless they are able to take advantage of those opportunities, define them outside the male paradigm, and thereby obtain real power. Dominance Feminists demand actual social, legal, and economic equality, not just the vague assurance of equal opportunity. They argue that the current male-based social systems, designed by men to ensure that men retain power, will never provide true equality for women.”).

170. MACKINNON, *supra* note 77.

171. *Id.* at 12; see also MACKINNON, *supra* note 77, at 28.

172. See, e.g., Rhonda Copelon, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 25 COLUM. HUM. RTS. L. REV. 291, 291–367 (1994); Christine Chinkin, *Rape and Sexual Abuse of Women in International Law*, 5 EUR. J. INT’L L. 326, 328 (1994); KELLY DAWN ASKIN, *WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS* 4–5, 18 (1997); Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L.J. 217, 220 (2000); G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993); Committee on the Elimination of Discrimination Against Women, U.N. Doc. A/47/38 (Jan. 29, 1992); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, *adopted* June 9, 1994, 33 I.L.M. 960 (entered into force Mar. 5, 1995); Council of Europe Convention on Preventing and Combating Violence against Women, *opened for signature* May 11, 2011, C.E.T.S. No. 210 (entered into force Aug. 1, 2014); Rashida Manjoo, (Special Rapporteur) *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, U.N. Doc. A/HRC/23/49 (May 14, 2013).

173. MACKINNON, *supra* note 77.

main obstacles to gender equality.¹⁷⁴ Another essential reform motivated by radical efforts is the global recognition of sexual harassment as a legally defined form of discrimination against women.¹⁷⁵

Radical feminists have also deeply influenced international legal scholarship by exposing the ways in which public and private dichotomies legitimize male domination over women.¹⁷⁶ One radical feminism claim, for example, is that the exclusion and subordination of women often occur when “private” matters are left for national regulation rather than international, or accepted as issues that are in the power of the state rather than other entities (i.e. global institutes, regional authorities or civil society organizations).¹⁷⁷ MacKinnon articulates this line of critique as such:

The international structure has emerged as a set of interesting boxes defined by layers upon layers of distinctions between public and private. The public is formally supreme over the private, the private a space inside where power is left alone by public authorities. Women have historically been relegated to and identified with the private, excluded from and, when present, subordinated in the public.¹⁷⁸

Radical feminists identify issues such as family matters as subjects generally associated by states with the private domain, which deserves little attention or international supervision.¹⁷⁹ To illustrate, states often rely on religious and cultural traditions, which are considered as belonging to the private domain, to allow the subordination of women.¹⁸⁰ As a response,

174. See Preston & Ahrens, *supra* note 106, at 12 (discussing how radical feminists focus on each of these issues and can largely take credit for increased social awareness and action taken to remedy them).

175. See generally CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

176. MACKINNON, *supra* note 77, at 1–17. The foundational discussion of this theme appears in Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 625–30. See, e.g., CHARLESWORTH & CHINKIN, *supra* note 7, at 43;

177. See, e.g., CHARLESWORTH & CHINKIN, *supra* note 7, at 56.

178. MACKINNON, *supra* note 77, at 4.

179. *Id.*

180. See, e.g., Christina M. Cerna & Jennifer C. Wallace, *Women and Culture*, in *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW* 623, 646 (Kelly D. Askin & Doreen M. Koenig eds., 1999) (detailing the discrimination women face due to culture and emphasizing that “States have used this distinction [between public and private] to the disadvantage of women by asserting that certain harmful practices are cultural traditions, and thus outside of the realm of human rights law”); Madhavi Sunder, *Piercing the Veil*, 112 *YALE L.J.* 1399, 1402 (2002) (emphasizing claims that in our reality religion has become an “extralegal field” pushed to the private sphere); see also David Kennedy, *Images of Religion in Legal Theory*, in *RELIGION AND INTERNATIONAL LAW* 145, 149 (Mark W. Janis & Carolyn Evans eds., 1999) (discussing the history of religion and international law). Other feminist scholars have similarly demonstrated that civil and political rights have been regarded as belonging to public life,

some scholars, including MacKinnon, have demanded expanding public regulation of the “private” sphere to ensure the protection of women’s rights.¹⁸¹

Turning to discuss its methods, radical feminism seeks to expose the hidden power relations in international law. By showing how the law reflects male standards, radical feminists aspire to reveal “the woman’s standpoint,” as opposed to the currently enforced male standpoint.¹⁸² The distinct method suggested by radical feminism is *to identify and confront the ways by which women are oppressed by male dominance*. As a method of inquiry, radical feminists encourage feminist international lawyers to concentrate on the most systematic human rights violations and risk situations in women’s lives,¹⁸³ studying the roots of women’s oppression, because it is in these situations where domination is preserved. Feminist analysis of the international legal system should determine, for example, whether a global norm, policy, or practice contributes to the unequal distribution of *power* based on gender. MacKinnon’s dominance approach involves looking for those behaviors or legal rules that appear most natural and common, asking ourselves whether they conceal relationships of subordination. Power structures are often deeply ingrained by the law, in ways that makes them almost invisible. Hence, according to radical feminism, national and international legal strategies that expose unidentified hazards that women suffer should be at the heart of feminist work in international law.¹⁸⁴

Like all theories, radical feminism has its critics.¹⁸⁵ Some opponents argue that it is nearly impossible to identify an authentic women’s voice in MacKinnon’s male-dominated world.¹⁸⁶ Her negation of women’s personhood in the present is considered a limiting move in itself.¹⁸⁷ Additionally, some claim that radical feminism’s approach to women’s equality deems issues such as race and class as secondary.¹⁸⁸ Finally, as powerful and convincing radical feminism’s theory is, it may constrict us to viewing

while protection of rights in the private sphere of familial relationships has been neglected, and thus basic rights of women have suffered. *See, e.g.,* Romany, *supra* note 76, at 100–01.

181. *See, e.g.,* MACKINNON, *supra* note 133, at 193.

182. *See, e.g.,* MacKinnon, *supra* note 150, at 637.

183. MACKINNON, *supra* note 127, at 103–04.

184. *See also* CHARLESWORTH & CHINKIN, *supra* note 7, at 43 (for example, the authors mention uncovering the harms of sexual harassment and pornography); CATHARINE A. MACKINNON, *To Change the World for Women*, in BUTTERFLY POLITICS 11 (2017).

185. For consideration of some of these critiques, *see, e.g.,* Lacey, *supra* note 75, at 24;

186. *See, e.g.,* CAROL SMART, *FEMINISM AND THE POWER OF LAW* 77 (1989).

187. *See, e.g., id.*

188. *See, e.g.,* Lacey, *supra* note 75, at 24 (pointing to the limited substantive focus of radical feminism); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 580, 591–92 (1990), as described in CHARLESWORTH & CHINKIN, *supra* note 7, at 43.

women as victims of male domination, rather than powerful and autonomous change agents in society with control over their lives.¹⁸⁹ In highlighting women's oppression, it might fall into the trap of preserving patriarchal images of women. Still, radical feminism remains the most influential and thought-provoking strand in contemporary feminist legal scholarship.

D. Postmodern and Intersectional Feminisms - Considering Context, Women from Different Backgrounds and Compounding Experiences of Discrimination

Postmodern and intersectional feminisms are concerned with women's multiple identities and represent a spectrum of feminisms that challenge the partiality of feminist Western thought as well as the multitude of injustices that women and people of all genders may experience.¹⁹⁰ They strive to broaden feminist ideology by disrupting the Western conventions on which it too often rests.¹⁹¹ They challenge feminists to see beyond the model of the "middle-class, educated white feminist," and warn feminists against making generalizations about women across the world.¹⁹² Post-modern feminists reject universalizing grand theories and instead embrace the notion of a more contextualized and inclusive analysis of women's situations.¹⁹³ This critique, which emerges in different forms by postmodern, third world, Black, queer, and intersectional feminisms is very much a reaction to both radical and liberal feminism, and the primary claim made is that there is no single true story about women all over the world.¹⁹⁴ Instead, we have to be sensitive to particular contexts of women, to oppression based on race and imperialism, and to local issues related to women's lives.

189. See Lacey, *supra* note 75, at 24.

190. This includes Third World feminism. Nicola Lacey refers to feminist criticisms about the need to address the reality of women from different backgrounds as "difference feminisms." For a fuller analysis of these critiques see *id.* at 25–27; see also CHARLESWORTH & CHINKIN, *supra* note 7 at 44–48 (discussing postmodern and third world feminisms).

191. See GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END 141–42 (1995) (noting that postmodern feminists promote the notion of plurality and multiple viewpoints).

192. See, e.g., Ratna Kapur, *Human Rights in the 21st Century: Take a Walk on the Dark Side*, 28 SYDNEY L. REV. 665, 679–85 (2006) (arguing that feminists must understand and learn from the postcolonial engagement with rights to understand the situations of Third World women); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, U. CHI. LEGAL F. 139 (1989) (arguing that feminist theory must account for the ways that race and gender intersect to affect women's experiences).

193. See, e.g., SMART, *supra* note 186, at 68–69.

194. See, e.g., SANDRA HARDING, THE SCIENCE QUESTION IN FEMINISM 192 (1986); Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the Native Subject in International/Postcolonial Feminist Legal Politics*, 15 HARV. HUM. RTS. L.J. 1 (2002); Mary Joe Frug, Commentary, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045 (1992).

Post-modern and intersectional feminists, for instance, express concern about the role of law in identity-constituting and in maintaining and constructing power-relations between social and ethnic groups.¹⁹⁵ Charlesworth and Chinkin explain that postmodern feminism is “sceptical [*sic*] of modernist, universal theoretical explanations of the oppression of women and embraces ‘the fractured identities. . . [of] modern life.’”¹⁹⁶ This concept is also closely linked to that of intersectional feminists who center on overlapping experiences of discrimination and point to the ways in which people’s various social identities exacerbate inequality, extend across generations, and deepen oppression.¹⁹⁷ Third world feminism, queer feminism, and other third wave streams similarly reveal the necessity to engage with the ways inequalities intersect with one another and deny people their rights and equal opportunities in forms much more complex than ever thought (including race, poverty, indigenous status, and gender identity).¹⁹⁸ As Chandra Talpade Mohanty has argued, Western feminism has led to the creation of the “Third World Woman,” an ideological and overly reductive representation of womanhood in developing countries.¹⁹⁹

The idea of incorporating the complexity of multiple oppressions into feminist discourse has had a tremendous impact on feminist theory, motivating many scholars to respond to this difficult challenge.²⁰⁰ In international legal scholarship, postmodern and intersectional feminisms triggered arguments against universal legal concepts and attempts to theorize the global situation of women, challenging if such broad endeavors would be useful in achieving gender equality in a reality in which the law itself often “disqualifies women’s accounts and experiences.”²⁰¹

An emphasis on localized narratives and human experience is characteristic of postmodern and intersectional feminist legal methods. As methods, they encourage contextual inquiry – of the particular contexts and realities of women from different backgrounds. As an example, postmodern feminist legal scholars question international law’s ability to recognize the differences between individual women’s experiences, such as those in previously colonies countries and those who are religious.²⁰² Postmodern and intersectional feminisms critiques suggest addressing women’s multiple identities paying special “attention to language and the way that [the law or

195. See, e.g., Nicola Lacey, *supra* note 75, at 26; MINDA, *supra* note 191, at 143.

196. CHARLESWORTH & CHINKIN, *supra* note 7, at 44.

197. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245–46 (1991).

198. See e.g., Janet Halley, *Take a Break from Feminism?*, in GENDER AND HUMAN RIGHTS, *supra* note 73, at 57; Ratna Kapur, *supra* note 192.

199. CHANDRA TALPADE MOHANTY, FEMINISM WITHOUT BORDERS 40 (2003).

200. See SMART, *supra* note 186, at 68.

201. *Id.* at 86, as described in CHARLESWORTH & CHINKIN, *supra* note 7, at 44–45.

202. Kapur, *supra* note 192, at 684–85.

legal language] filters out women's experiences and understanding"²⁰³ as well as focusing greater attention on dynamics of overlapping concurrent forms of discrimination.²⁰⁴

Applied to international law, postmodern and intersectional feminisms inquiries offer to explore the ability of the international legal system, in its current structure, to motivate social reform. They are especially aware of the diversity of women and encourages searching for ways to include consideration of specific group affiliations such as ethnic origin.²⁰⁵

A method worth consideration here is that of "world traveling" which has been developed by Isabelle Gunning to encourage a multicultural dialogue.²⁰⁶ Charlesworth recommends Gunning's method for analysis of international law, explaining that it involves "being explicit about our own historical and cultural background, trying to understand how other women might see us, and recognizing the complexities of the lives of other women."²⁰⁷ Similarly, intersectionality asks that we consider the diverse ethnic, cultural, and historical backgrounds of a person; it requires us to search for intersecting forms of discrimination in international rules and to expose their compounded negative impact on the women and persons of all genders concerned.

While intersectional feminism has been broadly accepted, the postmodern feminism has had its critics.²⁰⁸ It has been argued that the localized narratives adopted by postmodern feminism may weaken the international human rights discourse, making it too frail to respond to the global oppression of women.²⁰⁹ As a result, several attempts have been made to address the range of postmodern critiques, including by embracing an eclectic approach that accepts, for instance, that several approaches can be applied in feminist legal analyses.²¹⁰ More generally, postmodern and intersectional feminists continue to challenge the ability of international legal

203. CHARLESWORTH & CHINKIN, *supra* note 7, at 45.

204. MacKinnon, *supra* note 2; *see also* INTERSECTIONALITY: SPECIAL ISSUE, 13 EUR. J. WOMEN'S STUD. (Ann Phoenix & Pamela Pattynama eds. 2006).

205. *See e.g.*, Kapur, *supra* note 192.

206. *See* Isabelle Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189, 189–248 (1991).

207. Charlesworth, *Talking to Ourselves*, *supra* note 7, at 32.

208. MacKinnon provides an interesting analysis of postmodern critiques questioning many arguments that were made by postmodernists about feminist theory. *See* MACKINNON, *supra* note 77, at 44–63.

209. *See* MINDA, *supra* note 191, at 144–47 (critiques of postmodernism express "worry that the localized narratives of postmodernism are too 'anemic' to do anything about the structural problems posed by gender hierarchy." The argument is made that only large narratives can motivate transformative changes in law and society.).

210. *See* CHARLESWORTH & CHINKIN, *supra* note 7, at 45–46.

rules to respond to the issues and concerns of women from different traditional, social, ethnic, religious, or political statuses.

E. *Possible Challenges*

The theories and methods explored thus far add valuable insights to the study of gender as a category of analysis in international law. They broaden the feminist perspective of the international legal system and offer different techniques to engage with the rules, institutions, and global norms more critically. Elements from these different approaches can be found in most feminist projects in international law. The varied strands in feminist thought also demonstrate an intellectual richness of the discourse on women's equality. Feminist theories provide many opportunities for scholars in the field of international law who wish to tackle gender inequality. At the same time, however, they also present certain challenges.

Once the main feminist methods are understood and fully appreciated, the greatest challenge is that different feminist methods may lead in very different directions. For instance, traditional liberal feminism suggests targeting and eliminating differences between men and women in hope to achieve gender-neutral legal outcomes. Cultural feminism values the task of distinguishing between men and women - finding women's different voice - to identify new "feminine" legal methods for resolving conflicts and for redefining international legal concepts. In contrast, radical feminism would point to areas of male power that preserve the subordinate position of women and draw attention to ways out of male dominance. And postmodern feminism would question the very suitability of international law to respond to women's inequality, emphasizing the blindness of international law to additional identities, experiences, oppressions, leading the idea that international law is based on Western ideologies and ideals.²¹¹ This means that the challenge for some international scholars does not end with embracing a feminist perspective. Instead, the challenge begins with the attempt to choose one of these alternatives and to determine which feminist approach to prioritize. The next part suggests a different route to this choice.

IV. A QUESTION OF IMPACT – ASKING *THE WOMAN QUESTION* IN INTERNATIONAL LAW

A. *Making Gender Matter*

Every study that considers gender as an essential category for examination, whether alone or alongside other categories, is feminist. Attaching sig-

211. Cf. Barak-Erez, *supra* note 11, at 90 (in the context of legal interpretation, Barak-Erez argues that feminist interpretive approaches "carry the potential of intensifying the conflicts between feminists because they import into the interpretive arena the bitter controversies of the various feminist schools of thought.").

nificance to questions about gender means believing that it can produce outcomes that may have significant progressive consequences for our human knowledge. This type of study entails assuming that our world is not neutral and objective until we invest efforts to make it such. The method of asking *the woman question* does just that: It regards gender as important and an indicator of possible gaps in the law. *The woman question* is a constant search for the gender implications of the law.²¹² While the various feminist approaches are critically important, this part shall suggest that there is a need for a clearer *overarching method* that would allow a more accessible gender-based scrutiny of international law as well as an examination of possible legal strategies to secure justice for women. As shall be seen, *the woman question* corresponds with this dual goal.

The woman question seeks to amend injustices wherever those are found. Or, put differently, the woman question seeks *all* of the justices sought by the different feminist theories. It offers a common ground for feminist legal analysis that does not entail adhering to one ideology but rather relies on the basic assumption in contemporary feminist legal theory that “the ways in which sex/gender has shaped the world, including through law, have been unjust.”²¹³

This question differs from the various feminist approaches described thus far in that it returns to the core quest of legal feminism, which is to expose the impact of the law on women. Unlike the methods explored above, it does not assume anything but the fact that the law may operate differently with respect to women and may influence them in ways that could result in inequality.

The decision to employ this method and to show how it can be applied in international legal contexts developed during my work on global and local conflicts around women’s religious freedoms, examining the influence of religion on the design of human rights law and its response to women’s concerns.²¹⁴ At a certain point during my study of feminist theories in international law, it seemed that the simple decision to apply a feminist perspective in my work was a challenge. It was not because of the need to get acquainted with feminist theories. (I did that enthusiastically). It presented a challenge, because I had to navigate between competing commitments, as well as reckon with what seemed like a deepening contestation between the various strands and their multiple methods (the latter sometimes defined as

212. Bartlett, *supra* note 1, at 837 (“Feminists across many disciplines regularly ask a question – a set of questions, really – known as the “woman question,” which is designed to identify the gender implications of rules and practices which might otherwise appear to be neutral or objective.”). This method can be expanded to research studies that seek to avoid the gender binary and refer to the gender question in ways that take into consideration a spectrum of genders and the impact of the law on people of all genders. It can be applied in a wide range of areas of international law.

213. Lacey, *supra* note 75, at 16.

214. Elkayam Levy, *supra* note 95.

such and often not).²¹⁵ The choice to investigate how gender may have shaped international law seemed to require making an excruciating decision (especially for a young scholar) about what would be the most appropriate feminist approach. The deeper I delved into feminist theories, the harder the decision became. As an international lawyer, there was another significant aspect for my research to consider, which was the sense of obligation to devise practical outcomes that would be responsive to any gaps I might find in protecting women's rights. For many of us, the feminist project in international law does not end with a critique of the law. Global norms are used by activists all around the world to protect women and to mobilize social change at the domestic level. International lawyers take for granted that, to varying degrees, international law constantly affects and has the power to positively influence national laws and policies in multiple ways.²¹⁶ Therefore, our work, though critical of the law, remains constructive.²¹⁷

Looking at the several methods explored in the previous section—i.e., the liberal, cultural, radical, and postmodern critiques—asking *the woman question* provides a unifying inquiry. The woman's question's focus on consequences allows us to frame questions—about how gender shapes legal rules, what assumptions are made by the law about women, and whose interests are reflected or deemed peripheral—and then analyze them and reach both theoretical and operational conclusions. As Bartlett explains, "A question is a method when it is regularly asked."²¹⁸ *The woman question* is regularly asked in international law but has never been articulated as such. However, it is safe to say that the central feminist question in international law is the question of impact of the law on women.

All feminist methods, in one way or the other, call on scholars to engage in baring the implications of the law on women. Feminist approaches vary in the type of guidance they offer for identifying and confronting women's otherness in the legal sphere. The problem is that making a choice between these views is not always necessary. It adds complexity that often places an unnecessary burden on scholars. This situation certainly goes against the general ambition of expanding feminist work in international

215. See Vanessa E. Munro, *Navigating Feminisms: At the Margins, in the Mainstreams or Elsewhere?*, in FEMINIST PERSPECTIVES ON CONTEMPORARY INTERNATIONAL LAW BETWEEN RESISTANCE AND COMPLIANCE, *supra* note 7, at 13 (discussing contemporary internal debates).

216. SIMMONS, *supra* note 31.

217. See CHARLESWORTH & CHINKIN, *supra* note 7, at 60–61 (noting that feminist analysis in international law has two major roles: one is deconstruction of the values and norms of the international legal system and the other is that of reconstruction. The second task requires rebuilding the basic concepts of international in ways that would lessen discrimination against women). See generally Lacey, *supra* note 75, at 17 ("[Feminist scholarship] shows a particularly intimate linkage between theory and practice: both with a rejection of any strong division between the two. . . ; and with an impulse to have effects beyond the academy. Hence feminist theory is firmly grounded in particular legal issues.").

218. Bartlett, *supra* note 1, at 838.

law. In order to address the unequal position of women in society, *the woman question* suggests a general endeavor by which we would systematically think of the influence of gender.

Asking *the woman question* addresses the current need to reconceptualize and reexamine *the commonality in feminist projects* in international law. It offers to challenge aspects of existing legal concepts that disadvantage women. It involves analyzing the ways in which sex/gender shape international legal rules and how the international law might “fail to take into account the experiences and values that seem more typical of women than of men, for whatever reason.”²¹⁹ *The woman question* explores the impact of gender in various ways, asking whether the law places a disproportionate burden on women,²²⁰ if so in what ways, and how gender creates social differentiation that is unjust or legitimates certain institutional arrangements. Moreover, the woman question invites an inquiry into possible amendments in the law and proposes thinking of ways to correct the inadequacies scholars might find.²²¹ It asks for a feminist analysis that reveals gendered legal structures and gaps while at the same time offers to explore opportunities for change. This general constructivist endeavor is important in international law, which continually affects the actions and behaviors of the states and, more importantly, is used to secure women’s rights all around the world.²²²

B. *The Transformative Potential of the Woman Question Analysis in International Law*

Asking the woman question in international law has another significant advantage: it allows us to envision not only ways to remove gender bias, but also new paths to set greater goals for our society and to reimagine a better world for women and people of all genders - aiming at transformational gender equality.

The global system is unique in that it promises constant search for improvement in the state of the world’s women. It found several areas of particular concern: women’s civil and political rights, women’s access to justice, to health and to education; violence against women; women’s inequality in the family (under family laws and religious laws) and in the labor market. All these areas have been addressed by general instruments, or

219. *Id.* at 837.

220. Barak Erez, *supra* note 11, at 95-97.

221. Bartlett, *supra* note 1, at 837 (“Have women been left out of consideration? If so, in what ways? How might that omission be corrected? What difference would it make to do so?”).

222. See generally Myres McDougal, *The Impact Of International Law Upon National Law: A Policy Oriented Perspective*, 4 S.D. L. REV. 25 (1959); SIMMONS, *supra* note 31; Karen Knop, *Here And There: International Law In Domestic Courts*, 32 N.Y.U. J. INT’L L. & POLITICS 501 (2000); Harold Honjuh Koh, *How Is International Human Rights Law Enforced*, 74 IND. L.J. 1397 (1998); SHAW, *supra* note 50, at 265-345; STEINER ET AL., *supra* note 84, 1087-1243 (discussing “states as protectors and enforcers of human rights”).

through CEDAW and other specific treaties and treaty bodies, yet, progress has been sorely slow. Despite decades of international commitments to women's rights, violence against women continues to be prevalent in many countries, and significant gaps exist in every society of the world between women and men on numerous indicators (such as education, health and economic status). The Covid-19 pandemic has further undermined many past achievements of feminist activism: Women have suffered from domestic violence at alarming rates, have been more likely to lose their jobs and carry unpaid care work, and were largely under-represented in decision-making processes regarding the response to the pandemic. This crisis has shown how deeply gender inequality is embedded within our social, legal and economic systems. In response to these challenges, the global discussion of women's human rights has gradually widened and deepened in recent years, moving beyond seeking to raise awareness and understanding obstacles - to encompass a vision of transformed attitudes and profound structural changes in social, political and economic institutions.²²³ This process is only beginning. Yet, in many ways, we are now witnessing a transition in the international understanding of gender equality. We are at a time of a global shift in paradigm to transformative equality.²²⁴ Asking the woman question in international law can and should encourage a focus on advancing *transformation*.

Sandra Fredman has described the concept of transformative equality noting that: "Equality as transformation does not aim at a gender-neutral future, but one which appropriately takes gender into account. The future is not simply one of allowing women into a male defined world. Instead,

223. See, Ginette Azcona et. al, UN WOMEN, FROM INSIGHT TO ACTION: GENDER EQUALITY IN THE WAKE OF COVID-19 (2020), <https://www.unwomen.org/en/digital-library/publications/2020/09/gender-equality-in-the-wake-of-covid-19>.

224. See e.g., UN WOMEN, A TRANSFORMATIVE STAND-ALONE GOAL ON ACHIEVING GENDER EQUALITY, UN WOMEN (June 2013), <https://www.unwomen.org/en/what-we-do/-/media/AC04A69BF6AE48C1A23DECAEED24A452.ashx>; SANDRA FREDMAN & BETH GOLDBLATT, DISCUSSION PAPER: GENDER EQUALITY AND HUMAN RIGHTS (July 2015), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/goldblatt-fin.pdf?la=en&vs=1627> (Marking transformative processes as one of four dimensions to achieve gender equality. The authors note that the four dimensions of substantive equality are: "to redress disadvantage; to counter stigma, prejudice, humiliation and violence; to transform social and institutional structures; and to facilitate participation, both in the form of political participation and social inclusion"); SOMALI CERISE & FRANCESCA FRANCAVILLA, TACKLING THE ROOT CAUSES OF GENDER INEQUALITIES IN THE POST-2015 DEVELOPMENT AGENDA (2012); Dianne Otto, *Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law*, in INTERNATIONAL LAW: MODERN FEMINIST APPROACHES, *supra* note 16, at 105; UN Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 25 on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on Temporary Special Measures* (2004), <https://www.refworld.org/docid/453882a7e0.html>; General Recommendation 25, para 10; Byrnes, *supra* note 13, at 55–56 (explaining the concept of transformative equality).

equality for women entails restructuring [of] society so that it is no longer male-defined. Transformation requires a redistribution of power and resources and a change in the institutional structures which perpetuate women's oppression."²²⁵ As a unifying method, asking *the woman question* is essentially a transformative commitment to ensure justice, autonomy, and equal social power for women.

Therefore, asking *the woman question* in international law should take into account, on the one hand, the unique characteristics of this system (i.e. the distinctive ways it perpetuates women's inequality), and on the other hand, the ways by which it can motivate change and inspire transformative processes. With respect to its distinct features, in the past two decades, the international legal system has changed continuously both in terms of normative developments and structural ones.²²⁶ More and more entities engage with global rules, interpret them, and, indeed, feminist ideas have been increasingly absorbed into international and domestic institutions in gradual processes of interaction, implementation, and collaboration. However, I identify four core limiting elements that make the international legal system seem impervious to feminist concerns. First, unlike national legal systems, international law is bound by states' agreement and subject to geopolitical agendas. It turns to *states* as its primary subjects. The simple fact remains that international law is limited to the issues that states are willing to accept supranational supervision.²²⁷ Hence, concerns that are more politically controversial remain "outside the ambit of international law [and] do not seem susceptible to development and change in the same way."²²⁸ Despite the progress made, these features of the international legal system continue to be stable. The reality is that human rights often do not get materialized for those they are meant to protect. The influence of international human rights norms on individuals, and especially women, is often less apparent or discounted (e.g. due to lack of compliance or explicit reservations to the treaties).²²⁹ Therefore, feminists continue to share a genuine concern with international law's origins and functions and its disciplinary boundaries concerning women. Second, women continue to be under-represented in international institutions even today, with men making up a majority in almost every international institution, including in political bodies, monitoring committees, and tribunals.²³⁰ Third, non-observance, lack of implementation of international norms by states, and resistance to efforts to advance gender

225. Fredman, *supra* note 13.

226. See Charlesworth & Chinkin, *supra* note 95, at 17.

227. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 645 ("international law defines the boundaries of agreements by the international community on the matters that states are prepared to yield to supranational regulation and scrutiny.").

228. *Id.*

229. *Id.* at 625.

230. See Hilary Charlesworth, *Transforming the United Men's Club: Feminist Futures for the United Nations*, 4 TRANSNAT'L L. & CONTEMP. PROBS. 421, 424-29 (1994).

equality are prevalent and are being increasingly justified on the basis of family or traditional values, and on grounds of adherence to religious laws and cultural practices.²³¹ Fourth, the design of the international system is biased in ways that await being fully revealed as almost all global institutions, structures, concepts, and rules were established by men at a time where women were considered inferior.²³²

Asking *the woman question* in the area of international law entails uncovering these elements. Based on this question, I offer to integrate an analytical model consisting of three stages allowing for a systematic and structured feminist examination of gender and related social issues in international law. The goal of this model is to allow a thorough analysis of diverse gender phenomena within a clear frame of thinking that could push international thinkers to re-examine the unique inadequacies of the international legal system. The *first* stage involves examining the present global regulation of the issue at stake and mapping the relevant international stakeholders with the mandate or power to address it. The *second* stage turns to impact assessment, which aims to expose silences, as well as regulatory and participatory gaps that characterize the international legal system. This examination involves asking how those global norms affect women, including women of different backgrounds. It also involves revealing the hidden social assumptions underlying these gaps (including any stereotypes, prejudices and narratives that shape the range of possibilities to address the issue).

The *final* stage, and perhaps the most crucial part, proceeds to a transformative reconstruction endeavor. It involves answering how we can reimagine the global and national systems and reshape legal constructions to create a gender-just system. This part embodies the idea of transformative equality which, as said, expresses the necessity for structural changes and long-term transformative processes to address deeply entrenched societal inequalities based on gender. Fulfilling its objectives requires redressing exclusionary social structures in the law that perpetuate women's inequality. This proposed analysis is intended to help frame gender issues and to allow a systematic and structured feminist examination of related social and legal issues in international law. One of the model's purposes is to ensure that researchers will not refrain from discussing these issues because of confusion about the different feminist approaches.

231. See Frances Raday, *Recent Developments in the UN Human Rights Council: Traditional Values and Women's Right to Equality in the Family*, Oxford Human Rights Hub, OXFORD HUM. RTS. HUB (Sept. 2, 2015), <https://ohrh.law.ox.ac.uk/recent-developments-in-the-un-human-rights-council-traditional-values-and-womens-right-to-equality-in-the-family/>.

232. Feminist scholars generally express concern about the marginalization of "women's issues" by the existence of separate specialist institutions and legal instruments designed to address "women's concerns." The claim made is that these institutions were created only as a response to the structural and institutional bias of the international legal system. Charlesworth & Chinkin, *supra* note 95, at 17.

C. Reimagining the Rules

The first stage of asking the woman question in international law has a descriptive nature. The analysis begins by *identifying and describing the dominant legal norm* at stake, asking how it is globally regulated at present. This question serves to fully comprehend the scope of international oversight, covering relevant international instruments, declarations, resolutions, reports, and individual communications. This examination also involves identifying the relevant global actors: monitoring bodies, special rapporteurs, working groups, international tribunals that attended the issue, including major governmental and non-governmental organizations, and others. In other words, the analysis starts with the initial task of presenting the international legal standards and mapping the relevant institutional bodies. For example, examining the right to freedom of religion or belief and its impact on women entails identifying the global sources and bodies that address this right. Exploring issues such as the situation of women living in poverty involves pointing to the dominant rules and global institutions preoccupied with the formulation of standards relating to this matter.

This examination alone may yield interesting findings as to the bodies that attend to the matter, as well as to those that do not. It can also expose the current paradigms by which these issues are examined. In the case of the right to freedom of religion or belief, for instance, it is interesting to find out that the CEDAW Committee has no mandate to properly address this right or to monitor its implementation, as this right is not enumerated in the Convention. It is also interesting to observe differences in the way that the Human Rights Committee refers to religious liberties as highly significant as opposed to the threat that the CEDAW Committee identifies in justifying discrimination against women on the basis of religious practices and laws.²³³

The second stage turns to *impact assessment*. This stage focuses on exposing the effect of the law on women and answering whether and how the global regulation of the issue explored in the first stage relates to the reality of women's lives. The impact examination in international contexts is unique, as it aims to identify possible *silences* in the law, neglected areas, regulatory or participatory gaps, areas that lack global oversight, or rules that are overly broad in ways that obscure possible implementation.²³⁴ The woman question invites us to take a closer look at the rules that shape global response and that determine the scope of states' international legal obligations. It requires paying attention to women's agency and voice in the system, to structural disadvantages or to the ways by which gender issues are

233. See Elkayam Levy, *supra* note 95; see also Cochav Elkayam Levy, *The Diversity of Womanhood and All of God's Creatures: Addressing Challenges in the Protection of Women's Religious Freedoms Using a Novel Classification*, 53 CORNELL INT'L L. J. (forthcoming 2021).

234. Charlesworth, *supra* note 15, at 381 (claiming that "the silences of international law may be as important as its positive rules and rhetorical structures").

deemed peripheral or simply ignored. *The woman question*, in this regard, is significant as it is designed to expose silences of the law concerning women. It reveals “how the substance of law may silently and without justification submerge the perspectives of women.”²³⁵ It urges us to investigate why certain issues have not been deemed deserving of global regulation or supervision. Although searching for silences is not a new technique for international scholars, *the woman question* offers a broader framework for its application. Charlesworth explains that the method of detecting silences is useful for international lawyers since it leads to questions about the objectivity of the discipline. It also relies on the idea that “all systems of knowledge depend on deeming certain issues as irrelevant or of little significance.”²³⁶ Based on this understanding, Charlesworth and Chinkin encourage international scholars to ask, “Why are some activities considered capable of international legal regulation while others are not?”²³⁷

Asking *the woman question* in international law is thus a continuing effort to expose the marginalization of women’s experiences. The significance of searching for silences in international law goes beyond exposing biases. The silences in international law might be more important than the explicit rules that appear in the law, because the areas that international law does not touch “seem naturally to belong within the domestic jurisdiction of states.”²³⁸ The silences of international law define the boundaries of an agreement by the international community and are associated with the subjects that were left at the discretion of states.²³⁹ Therefore, the method of asking *the woman question* advances a feminist legal analysis that ultimately has the power to transform the system.

Moreover, this second part of the impact assessment aims to draw attention to underlying gendered social perceptions and assumptions. Bartlett notes, “in exposing the hidden effects of laws that do not explicitly discriminate on the basis of sex, the woman question helps to demonstrate how social structures embody norms that implicitly render women different and thereby subordinate.”²⁴⁰ Asking *the woman question* thus involves checking whether, in reality, the law matches or responds to the situation of women. And if not, why these gaps exist, and what perceptions or social narratives have led to their existence. Take, for instance, the efforts made when feminist scholars noticed that violence against women was not mentioned in the Women’s Convention, even though women gravely suffered from violence within and out of the home all around the world. Their realization led to a

235. As well as other excluded groups. Bartlett, *supra* note 1, at 836.

236. Charlesworth, *supra* note 15, at 381.

237. CHARLESWORTH & CHINKIN, *supra* note 7, at 60.

238. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 645.

239. *Id.*

240. Bartlett, *supra* note 1, at 843.

wide range of global actions, including interpretive efforts taken by the CEDAW Committee to address this omission.²⁴¹ Some of the *social barriers* that allowed this gap to persist were exposed as well, including how shame prevents women from reporting on violence and how the norm of protecting domestic unions from state intervention served to block government actions (and global measures) and solidified the overall societal acceptance of violence against women.²⁴² Asking *the woman question* in international law is thus necessarily a continuing effort to expose the invisibility of women and their experiences.

This last comment brings us to the third stage of asking *the woman question* in international law: the effort of transformative reconstruction. The third stage, as noted above, entails analytical reconstruction and is transformative in nature. It involves not only considering alternatives to the current situation but also reimagining the law or legal constructions so that we do not just offer modifications based on what exists. Rather, we offer modifications based on an effort to create and express a vision for change – asking ourselves, for example, what would have been had women had a part in the design of the law or what would a gender-just society look like. We must allow ourselves to ask bold questions about the future and envision a world we truly want for ourselves and for the future generations.²⁴³ The U.N. Women Peace and Security Agenda serves as good example of an approach seeking such transformation by fundamentally altering the global perception for achieving lasting and sustainable peace and security. It tackles the gendered impacts of armed conflicts and advances women’s partici-

241. Including extensive work by the CEDAW Committee. On July 14, 2017, the Committee adopted General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19. The former General Recommendation No. 19 from 1992 addressed violence against women as a form and manifestation of gender-based discrimination, used to subordinate and oppress women. It was a milestone in the history of the work of the Committee since this recommendation brought violence “outside of the private sphere and into the realm of human rights.” See Comm. on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 19: Violence Against Women*, U.N. Doc. A/47/38 (1992). General Recommendation No. 35 of 2017 expands the response to this matter and explains the gender-based nature of this form of violence, building on the work of international human rights mechanisms, as well as developments at national, regional, and international levels.; Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 35 On Gender-Based Violence Against Women, Updating General Recommendation No. 19.*, U.N. Doc. .CEDAW/C/GC/35 (Jul. 26, 2017); see also Eur. Consult. Ass., *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Apr. 12, 2011) (The Istanbul Convention was a result of global efforts invested in this direction.).

242. See e.g., Margunn Bjørnholt, *The Social Dynamics of Revictimization and Intimate Partner Violence: An Embodied, Gendered, Institutional and Life Course Perspective*, 20 NORDIC J. CRIMINOLOGY 90 (2019).

243. See Donella Meadows, *Envisioning a Sustainable World*, THE DONELLA MEADOWS PROJECT ACAD. FOR SYS. CHANGE, <http://donellameadows.org/archives/envisioning-a-sustainable-world/> (last visited May 7, 2021).

pation in peace-building and post-conflict reconstruction.²⁴⁴ It radically changed the global normative perspective of national security, conflict prevention and its resolution. Transformation requires that we be less cynical about the possibilities ahead of us and that we take seriously our dearest values, thinking in innovative terms about how to reimagine the entire framework so that it produces just and sustainable solutions.²⁴⁵

This ambitious task forces us not to stop when finding gaps but to continue and look for ways to tackle structural barriers. We ought to search for ways that may motivate transformative processes that confront profound structural disadvantages. To give another example, we all know that migrant women are widely discriminated against globally in almost every aspect of their lives and are at risk of suffering grave violations of their human rights. Addressing their situation in ways that go beyond traditional solutions within hosting countries, can, for instance, be done through an analysis of the entire global financial system, its gendered features, the different ways in which it motivates migration, revealing the conventions that dictate restrictive migration rules, and suggesting how this system should change to secure women's rights in the far future. Likewise, addressing women's poverty after marriage dissolution might suggest not only steps garnering state support but also a reconceptualization of the international definitions of the labor market to acknowledge and award work carried out in caring for children, and the establishment of social institutions that create support networks and foster direct involvement of global bodies in securing women's material needs. Global institutions should generally aim to have greater financial and institutional ability to connect with and support individuals, adopting more roles than those traditionally carried as supervisors of states. Responses to the situation of women living in poverty should also aim to transform social security schemes that depend on contributions from continuous, full-time participation in the paid workforce which disproportionately disadvantage women whose careers are often interrupted due to childcare obligations or part-time work at the informal sector. Transformation can also be achieved by simply looking for new partnerships. Local organizations are recently addressing domestic violence through collaboration with tech companies and national security bodies to assist victims.²⁴⁶ They hope that in the future governments around the world would treat violence against women as a national security matter and regard it as an issue that puts at risk the well-being of the population and that jeopardizes the stability of the national and international economy.

244. S.C. Res. 1325 (Oct. 31, 2000).

245. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 645 ("To redefine the traditional scope of international law so as to acknowledge the interests of women can open the way to reimagining possibilities for change and may permit international law's promise of peaceful coexistence and respect for the dignity of all persons to become a reality.").

246. *See supra* note 44.

Scholars must try to take an unorthodox path and imagine the future, asking themselves: How would the law look in a gender-just society? Such exploration has the potential to yield transformative solutions rather than “presently possible” alternatives. In many ways, *the woman question* in international law is very much forward-looking and is predicated on the understanding that this entire body of law has a tremendous potential to motivate positive change but has been shaped based on certain very problematic understandings of women and of gender roles.²⁴⁷ It is a call for legal imagination. One important understanding in fulfilling the promise of transformative change is to embrace this imaginative nature. Envisioning the future is not an exclusively rational, nor linear process. Redrafting the premises of international law requires the opposite of strict “realistic” thinking. It necessitates intentional work to distance ourselves from our conventions and internal constraints, suspend disbelief and ask ourselves again and again what our vision is for the system and for a better world more generally.²⁴⁸ To imagine and achieve transformation, we must not limit ourselves to the present nor compromise on the changes that we believe are at reach.²⁴⁹ Transformation becomes possible when we allow ourselves to be sincere with our ambitions and not scared to dream. As Donella H. Meadows has brilliantly put it, the process of building a vision, “comes from values, not logic.”²⁵⁰ No doubt it is a new muscle for us to practice. The woman question opens up this space for rethinking the relationship between the law and systematic discrimination to enable the construction of a new sense of respect to women’s equal place in society.

This suggested model for asking *the woman question* in international law has many advantages for international legal scholars thinking of how the current international legal regime impacts women. Applying *the woman question* motivates an important inquiry about the nature of our international legal knowledge, whom and what fields are privileged, and which are silenced and undervalued in ways that could ultimately lead to significant findings. This method also offers hope and encourages a much richer understanding of gender in international law. It has powerful theoretical and practical potential for scrutinizing international law while acknowledging its ability to mobilize change. It calls on international scholars to identify, explain, and strive to transform the areas in the law that fall short of fulfilling the basic promise for a just global legal system.

247. Charlesworth, *supra* note 15, at 381 (“By and large, when women enter into focus at all in international law, they are viewed in a very limited way, often as victims, particularly as mothers, or potential mothers, in need for protection.”).

248. Meadows, *supra* note 243.

249. *Id.*

250. *Id.*

CONCLUSION

The feminist project in international law is visionary. Its reformative power serves as an inspiration to many in their path to influence the future and imagine a better world. Feminists take upon themselves to rethink and reshape the boundaries of the international legal system with the goal of securing human rights and addressing women's experiences. This article delved into the depth of this ambition, aiming to clarify what it means to apply feminist methods in international law and presenting a construct for unifying them in an overarching framework. It began by explaining the development of gender in international law and presented the sets of questions that feminist methods in international law offer. These methods are particularly significant for scholars, and engaging with them reveals the richness of feminist thought. Each is important for informing and ascertaining a feminist position. The different, sometimes clashing, feminist views present challenges but mainly add a requirement to choose between them or somehow fuse their insights. To address this difficulty, this article ultimately aspired to emphasize the contribution of an overarching method of asking *the woman question* in international law. This question aims to reveal the impact of gender on the design of legal rules. I argue that *the woman question* is the central feminist question in international law and a widely shared inquiry. The model offered here for its implementation in international law underscores its transformative potential. It encourages international scholars to reveal gendered legal structures and gaps, while at the same time, to discover and study opportunities for change. Charlesworth, Chinkin, and Shelley Wright long ago pointed out that their work in international law involves "looking behind the abstract entities of states to the actual impact of rules on women within states."²⁵¹ The purpose of this article has been to emphasize just that and to turn this general ambition into a clear analytical scheme.

Based on the method of asking *the woman question*, this article developed a future oriented analytical model specifically designed to address the most deeply-rooted faults of the international legal system. Concisely, *the woman question* analysis in international law (a) identifies the dominant international legal norms and relevant stakeholders; (b) assesses the norms' impact on women, including on women of different backgrounds, by uncovering silences, regulatory and participatory gaps, and underlying gendered social assumptions; and (c) undertakes a transformative reconstruction endeavor. This last stage is intended to encourage transformative processes that confront entrenched social and legal gendered structures within the international legal system. It requires a complicated intellectual effort to reimagine the future as means to move towards a gender-just global system.

As stated at the onset of this project, methods matter. Methods explain the work that we do in law. They are the way by which we produce valid

251. Charlesworth et al., *Feminist Approaches to International Law*, *supra* note 7, at 614.

knowledge.²⁵² The method of asking *the woman question* is significant in that it is an effective approach to the law. First, it tackles the very sensitive and dynamic relations between law and society when they touch the lives of women. It regards gender as crucially important to our understanding of the law. The analysis founded on the basis of *the woman question* invites in-depth consideration of international legal norms together with an examination of the hidden social assumptions that they represent. Second, *the woman question* reveals the blind spots of our international legal knowledge. Asking *the woman question* demands a constant search for unregulated or minimally regulated areas, which bear tremendously challenging implications on the status of women. It thus can capture the most static problems of the international system. Third, asking *the woman question* has the potential to expand gender-based research in international law as it concentrates the framing of gender issues around the singular question of impact. The focus on impact makes feminist work in international contexts far more accessible than before. Finally, asking *the woman question* can push the boundaries of the discipline of international law by encouraging a journey to its unknown future. This effort emphasizes the need to engage with the challenging task of reinventing an international legal system which was formed without the involvement of women nor in regard to their needs and interests. Hopefully, reimagining the future will be the most empowering, fulfilling, and transformative result of this work.

252. MacKinnon, *supra* note 2, at 1019. As Nancy Hartsock has noted, “at bottom, feminism is a mode of analysis, a method of approaching life and politics, a way of asking questions and searching for answers, rather than a set of political conclusions about the oppression of women.” Nancy Hartsock, *Feminist Theory and the Development of Revolutionary Strategy*, in *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* 56, 58–59 (Z. R. Eisenstein ed., 1979).

